CHAPTER I.

AUTHORITY FOR THE IMPOSITION OF TAXES.

SEC. 1. *The Authority of the Towns.* The council of Plymouth had no authority to delegate its power of government over the lands granted to its patentees.[1] The king failed to establish a government over the New Hampshire towns until 1680. Therefore, whatever authority the *de facto* governments possessed over the four New Hampshire towns until the above date must have rested on the voluntary consent of the people. Portsmouth and Dover both received comparatively large additions to their numbers about 1632. From 1633, when the first signs of an elementary political organization appeared, until the date of the respective combinations, authority was exercised by the leading men of the companies owning the patents, with the tacit consent of the people.[2] With the growth of the towns such a government proved unsatisfactory to the law-abiding element,[3] and recourse was had to a political compact, based upon the free consent of the signers, whereby they solemnly pledged themselves to abide by the will of the majority. Unfortunately the Portsmouth compact is lost, and in its absence we may ascribe to the banished church congregation at Exeter the first known agreement in New Hampshire, July 4, 1639, to submit to taxes imposed by the major part of

[1] Decision of Lord Chief Justice, July 20, 1677, given in full in I Belknap's N. H., App., xxviii.

[2] The first governor seems to have been appointed by the patentees. Very soon afterwards the historians speak of the people's electing the officials. I N. H. Prov. papers, 110–119.

[3] Preamble to Dover combination, I N. H. Prov. papers, 126.

the freemen. This agreement is found in the oath[1] of the people, taken probably in connection with the election of the first officials. No especial reference to the power of taxation occurs in the Dover combination, but such power is, of course, implied in the agreement to submit to "all such laws as shall be concluded by a major part of the freemen of our society."[2]

That the Portsmouth combination gave the authorities the power of taxation, either directly or with the approval of a majority vote of the inhabitants, is evidenced by the grant of the glebe on the 25th of May, 1640.[3] Fifty acres of land were granted to the parish to continue in perpetuity for parish uses. As Hampton was thought to be within the boundaries of Massachusetts, it was at once given the powers of a township and entered upon its corporate life in accordance with a system already organized.

SEC. 2. *The Authority of Massachusetts.* By the terms of the union with Massachusetts in 1641, the towns on the Pascataqua, Portsmouth and Dover, were "accepted and reputed under the government of the Massachusetts as the rest of the inhabitants within the said jurisdiction are".[4] A provisional government was provided for until the next meeting of the general court, and until such agreement could be effected the authorities under "the late combination" were empowered "to govern the people there".[4] It was stipulated that the New Hamp-

[1] "We do swear by the great and dreadful name of the high God maker and governor of heaven and earth . . . that . . we will be ready to assist thee [the rulers] with our bodies and our goods and best endeavors." I N. H. Prov. papers, 134.

[2] Dover combination, I N. H. Prov. papers, 126. X N. H. Prov. papers, 700.

[3] Annals of Portsmouth, App., 394-6.

[4] I Mass. Col. rec., 319.

shire towns received into the union should "be subject to pay in church and commonweale as the said inhabitants of the Massachusetts bay do and no others,"[1] with the following qualification: "They shall be exempted from all publique charges other than those that shall arise for, or from among themselves or from any occasion or course that may be taken to procure their own particular good or benefit."[2] Courts were established, the towns were allowed two deputies in the general court, and the next year the freemen in the several towns were formally guaranteed the right of self-government in local affairs. Exeter was assumed to be a part of Massachusetts; Hampton was *de facto* by settlement. Thus the Massachusetts system of taxation was established in the New Hampshire towns almost from the very beginning of the exercise of that sovereign power, and continued for thirty-nine years—a fact that accounts for much that existed in the New Hampshire provincial system of taxation.

SEC. 3. *The Establishment of Legislative Authority.* The commission of 1680,[3] establishing the provincial government in New Hampshire, distinctly recognized the right of the people, through their legal representatives, to impose public taxes. The president and council were authorized, required, and commanded "to issue forth summons for" a general assembly, "within three months after they have bin sworn". In the meantime said president and council were authorized and required "to continue such taxes and impositions as have bin and are now laid and imposed upon the inhabitants

[1] I Mass. Col. rec., 305.

[2] I Mass. Col. rec., 319.

[3] I N. H. Prov. papers, 373–382.

thereof in the best and most equal manner they can, until a general assembly of ye sd province shall be called and other method for yt purpose agreed upon." However, when such assembly should have been legally organized in accordance with the above provision, the assembly was authorized by the royal commission "to consider the fittest ways for rasing of taxes and in such proportion as may be fit for ye support of ye sd government."[1] "All and every such acts, laws and ordinances" made by such general assembly or assemblies "shall first be approved and allowed by the president and council for the time being and thereupon shall stand and be in force until ye pleasure of us, our heirs and successors shall be known whether ye said laws, and ordinances shall receive any change of confirmation or be totally disallowed and discharged." All acts, laws, and ordinances were to be forwarded to the crown by the first ship that should depart thence to England "after their making". Soon after this, February 10, 1680, a special order was issued to constables requiring them to gather in all rates previously levied, giving them the power of distraint, and declaring that the council would cause restitution to be made to any person appearing to them to "be injured by over-rating".[2] The same day a general assembly was summoned to meet at Portsmouth on the 16th day of March following.[3] The assembly was organized on that date,[4] enacted a body of laws, and exercised the power of taxation granted by the commission in two successive years,[5] without question from any

[1] Commission of Governor Cutt, I N. H. Prov. papers, 380.

[2] Coun. rec., XIX, N. H. State papers, 657.

[3] Coun. rec., XIX, N. H. State papers, 658.

[4] Coun. rec., XIX, N. H. State papers, 662.

[5] I N. H. Prov. papers, 424–428.

source. The president and councilors commissioned in 1680 were, without exception, representative men of the province. Many of them had served their towns both in local affairs and as deputies in the larger political life of the general court of Massachusetts.

The appointment of Cranfield as lieutenant governor in 1682 marked the introduction of elements from without the province into the official positions. Although by his commission,[1] May 9, 1682, Cranfield was granted extraordinary powers, he even exceeded his authority.[2] With the consent and advice of the council he was to summon and call general assemblies "as need shall require". The governor was authorized to prorogue and dissolve general assemblies and had a negative upon all legislative acts. He was authorized further to suspend any member from the council and fill the vacancy —the act debarring the member so suspended from sitting in the assembly. The powers of the legislature over the revenue were otherwise unchanged. An assembly was called November 14, 1682,[3] which authorized "a rate of four pence in the pound upon all persons and estates".[4] Out of this tax a present of two hundred pounds was voted to the governor[5] in the hope of securing his favor toward the province.[6] At the second session of the assembly the governor and council proposed a bill for raising revenue, to which the representatives refused their assent. The representatives proposed several revenue bills which the governor declared to be

[1] I N. H. Prov. papers, 433–443.
[2] Report of Lords of Trade, I N. H. Prov. papers, 569–572.
[3] I Belknap's N. H., 192.
[4] Laws, 1682, I N. H. Prov. papers, 448.
[5] Laws, 1682, I N. H. Prov. papers, 448.
[6] I Belknap's N. H., 192.

contrary to law.[1] Cranfield then dissolved the house, January 20, 1683,[2] and with his council assumed the whole legislative power. The attempt was made to secure revenue for the support of the government by means of excessive fees, fines, and rents[3] from those occupying lands claimed by the Masonian proprietors, in addition to the usual excise, tonnage dues, and customs. Failing in this a third assembly was summoned to meet at Great Island, January 14, 1684.[4] A bill was presented to the house "for raising money to defray the expense of repairing the fort and supplying it with ammunition and other necessary charges of government." The next day[5] the house refused to pass the bill and was immediately dissolved. Disappointed in securing a sufficient revenue either by indirect means or through an assembly, Cranfield, February 14, 1684,[6] secured the reluctant consent of his council to an order continuing "all such taxes and impositions as have been formerly laid

[1] "The governor recommended to them several good bills that had passed the council, . . they either rejected, or put them into such a disguise as rendered them altogether useless, and afterwards would not take notice of any bills which did not arise from themselves; they likewise peremptorily insisted to have the nomination of judges and the appointing of courts of judicature, power solely invested in the governor by commission from his Majesty; and lastly, they had prepared bills repugnant to the laws of England, upon which the governor, finding them to act without any regard to his Majesty's service, or benefit of the province, after he had passed some bills, not knowing where these matters would end, dissolved the assembly." Letter of Edward Randolph to the Lords of Trade, I N. H. Prov. papers, 491–496.

[2] I Belknap's N. H., 193; Randolph's report, I N. H. Prov. papers, 493.

[3] Weare's Complaint to the crown, I N. H. Prov. papers, 515–519.

[4] I Belknap's N. H., 203.

[5] The members are said to have passed the night in Portsmouth, probably in consultation with their friends.

[6] I N. H. Prov. papers, 488. The warrants were issued May 10, 1684. *Idem*, 490.

upon the inhabitants."[1] The order was to be kept secret until the need for revenue should appear more pressing. In the mean time the Lords of Trade had sent an order directing Cranfield to make use of an assembly in raising taxes.[2] A fourth assembly was summoned May 27, 1684,[3] but was immediately dissolved on account of their "mutinous and rebellious disposition". The constables were ordered to collect the rate authorized by the council. The people uniformly refused to pay the so-called tax,[4] and the courts to enforce the order. The provost marshal of the province was "impowered and required" to collect the rate and authorized to call upon the constables for assistance "between sun rising and sun setting . . . forceing open dores for the better and more effectual getting in said rates." He was beaten by the men, and threatened with scalding water by the women.[5] The resistance to the tax was intensified by the deep-seated belief that Cranfield was personally interested in the claims of Robert Mason to the lands

[1] "Excepting only the rate of one penny in the pound raised in time of usurpation." I N. H. Prov. papers, 488–9.

[2] I Belknap's N. H., 213.

[3] I Belknap's N. H., 213.

[4] One of the collectors testified "that almost all of them answer that the commissioners directed that the taxes should be raised by the general assembly." I N. H. Prov. papers, 544, 496, 508, 543, 554.

[5] Thurston, the provost marshal, testified: "The wife of Moses Gilman (of Exeter) did say that she had provided a kettle of scalding water for him, if he came to her house, which had been over the fire two days;" also, "certain husbandmen of Hampton did follow the deponent and deputy marshal . . . from the town of Hampton, all on horse-back, into Exeter, being armed with clubs, and there came to the said company John Cotton, minister of Exeter, with a club in his hand, and the said company did push this deponent and his deputy up and down the house, asking them what they did wear at their sides, laughing at this deponent and his deputy for having swords." Deposition of Thomas Thurston, provost marshal, I N. H. Prov. papers, 551–554.

within the bounds of the province. One of the foremost citizens, Nathaniel Weare, was secretly dispatched to England to secure redress.[1] The case was referred to the Lords of Trade, a hearing granted,[2] and on March 27, 1685, a decision[3] sustaining the charges of the petitioners was handed down. As a consequence Cranfield vacated his office. Thus early in the history of the infant province the old world struggle between the forces of absolutism on the one hand, and the commons on the other, appeared. The issue was met fairly, fought out, as has been the wont of the English race, in legal channels, and the victory was with the people.

In the next attack the charge was made on a larger field, and the result was more decisive. In the Andros government, established June 3, 1686, all governmental powers were in the hands of the governor and the major part of his council, nominated by the crown. The right of the people to impose taxes upon themselves was nowhere recognized. The revenue from the excise and impost was increased, and on January 13, 1687, Andros and his council attempted to exercise the power of taxation granted them by the crown by authorizing an assessment of "a single country rate of one penny in the pound, according to former usage."[4] In the absence of records in the Andros period it is impossible to tell whether the New Hampshire towns submitted to the inevitable or made a vain resistance.[5] With the first rumors of the revolution in England the government of

[1] Copy of complaint presented by Weare, I N. H. Prov. papers, 515.

[2] Copy of order of Lords of Trade, I N. H. Prov. papers, 519.

[3] Report of Lords of Trade, I N. H. Prov. papers, 569–570.

[4] Mass. Hist. Coll., vii, 3d series, 171.

[5] The selectmen of Ipswich, Mass., refused to make the levy, and were heavily fined. I Holmes' Annals, 425.

Andros fell, April 18, 1689.[1] The absolutist reaction had been met on both sides of the water by the rising spirit of liberalism. The conflict and the successful issue further strengthened the New England colonists to meet succeeding inroads upon their rights in whatever way they might appear.

Left without a government, the New Hampshire towns—Dover, Portsmouth, Exeter, and Hampton—made several attempts to form a temporary government.[2] Through the action of Hampton the plan failed.[3] A very large element in the four towns naturally desired to resume their union with Massachusetts, and danger from the Indians was imminent. A petition drawn up at Portsmouth, February 20, 1690, addressed to the governor and council of Massachusetts recites that

> We, who have been under your government, having been for some time destitute of power sufficient to put ourselves into a capacity of defence against the common enemy . . . are necessitate to supplicate your Honors for government and protection as formerly . . . hereby obliging ourselves to a due submission thereto, and payment of our equal proportion (according to our capacity) of the charge that shall arise for the defence of the country against the common enemy.[4]

The petition, signed by four hundred citizens of the province of New Hampshire, was granted by the governor and council, approved by the general court, and, on

[1] II N. H. Prov. papers, 20.

[2] Town records, given in II N. H. Prov. papers, 30–34.

[3] "But whereas the inhabitants of the town of Hampton meet on warning for that end [to consider a form of government for the four towns], the major part by far of the said towne seemed to be ferful and suspicious of therer neighbor towns [that] they did not intend to doe as was pretended but to bring them under to theyer disadvantage which I thought was very ill so to think, yet they would give some instance of som former acts don." Letter of Nathaniel Weare, Mar. 16, 1690, II N. H. Prov. papers, 43–46.

[4] From the humble address of the inhabitants and trained soldiers of the province of N. H., Feb. 20, 1689–90, II N. H. Prov. papers, 34–39.

March 19, 1690, a list of officers for each town was presented and accepted by the above authorities.[1] During this second union of two years with Massachusetts, taxes both local and general were levied and collected "agreeable to former custom".[2] With the reëstablishment of the province, in 1692, the form of government and the respective powers of the governor, council, and assembly were essentially the same as in the establishment in 1680, with the exceptions that the negative over the acts of the assembly and the power to prorogue and dissolve said body remained with the governor as in the Cranfield commission.

The period from 1692 to 1700 was a critical one in the financial history of the province.[3] Lieutenant Governor Usher, armed with the powers granted by the royal commission, attempted at first to become the director and manager of the legislature. May 12, 1694, he sent for the lower house and made a speech to them "about the absolute necessity of raising money" for military purposes.[4] On the 17th of the month[5] he sent down "to the lower house to know whether they had done anything as to the raising of money for the support of the government in the province as to his proposals layd before them." Being answered in the negative, he summoned them into his semi-royal presence and "made a speach to them abt raising money as formerly." Again, on the 22d of the month, after the house had asserted their inability to make further appropriations,

[1] II N. H. Prov. papers, 40.

[2] II N. H. Prov. papers, 41.

[3] Governor Allen had purchased the Masonian claims and the acting Governor, Lieut. Gov. Usher, had been an official high in the councils of the Andros government.

[4] Journal of council and assembly, III N. H. Prov. papers, 18.

[5] Journal of council and assembly, III N. H. Prov. papers, 30.

the lieutenant governor requested the lower house to appoint two members to join with the council to "view the fortifications and report as to what was necessary for their defence." Upon the refusal of the house to make any reply to his message, "the lieutenant-governor sent down and commanded them in their majesties names to sit *de die diem* until they had sent up an answer positive."[1] The house persisted in their refusal to pass the lieutenant governor's revenue bills and two days later were dissolved.[2] For two years—1695 and 1696—the house provided revenue sufficient to meet the ordinary expenses, but refused, on account of their poverty, to make provision for the support of the lieutenant governor or of the fortifications and their garrison. The governor charged them with providing for the "maintenance of the ministry" and "town charges" to the neglect of the support of his royal Majesty's commission,[3] and added that he "shall lay the same before the King . . . and wait for orders and directions from him."[4] He then dissolved the assembly. In the meantime the opponents of Usher, under the leadership of Waldron and Vaughn, had secured the appointment of William Partridge, a popular merchant of Portsmouth who was in political accord with the house of representatives, to succeed Usher as lieutenant governor. The commission was obtained of the Lords Justices in the king's absence, through Partridge's friendship with Sir Henry Ashurst.[5] The popular party were now in control and proceeded to remodel the government in the interests of

[1] Journal of council and assembly, III N. H. Prov. papers, 22.
[2] III N. H. Prov. papers, 23.
[3] III N. H. Prov. papers, 46.
[4] III N. H. Prov. papers, 48.
[5] I Belknap's N. H., 207.

the people and to fill the offices with adherents of the popular party. September 15, 1698,[1] Governor Allen appeared, took the oath, and assumed control. A little later Usher appeared in the province. Governor Allen's attempted interference with the collection of the tax previously voted called upon him the just censure of the house. That body further warned him that unless he should "see cause to redress their grievances and carry on with a more moderate conduct,"[2] the house would make a second application to his Lordship (Lord Bellemont) for relief. The next day, January 7, the assembly voted to continue the "impost, excise and powder money", but to keep the income in the treasury until after the arrival of Lord Bellemont.[3] The governor attempted to justify his interference with collecting the last rate upon the ground that "complaint from several towns of moneys raised and misapplied" had caused the order "to forbear gathering until the accounts might be examined." He assured the house that he should "order the moneys to be gathered and paid to the treasurer," and after advising them "to act safely" declared the house dissolved January 17, 1699.[4] Although the officials in sympathy with the house and the people refused to serve under him,[5] Governor Allen did not further attempt to control the revenue. With the accession of Lord Bellemont to the governorship, July 31, 1699, the first distinct recognition on the part

[1] Coun. rec., II N. H. Prov. papers, 276.

[2] Address of the house to Governor Samuel Allen, Jan. 6, 1699, II N. H. Prov. papers, 289.

[3] Coun. rec., II N. H. Prov. papers, 191.

[4] Governor's address to the house, Coun. rec., II N. H. Prov. papers, 293.

[5] On the ground that he had violated the king's commission in allowing Usher a seat in the council.

of a royal governor of the right of the house of representatives to originate and be mainly responsible for public taxes appeared. In his inaugural address before the general assembly, Governor Bellemont, turning to the house, said: "I recommend to you, gentlemen of the house of representatives, the providing for the necessary support of the government, you being the best able to judge what the charge will be and its belonging to you of right to provide the means to defray the charge." [1]

The right of the house of representatives to control the public purse, thus definitely recognized by the royal governor, was enjoyed without question for a third of a century, 1699–1732. During this period the house exercised great freedom, both as to the manner of the levy and as to the amount of the tax. The governor advised the house in regard to taxation, [2] but did not attempt to coerce through repeated vetoes or dissolutions. The governor annually directed the treasurer to lay the accounts [3] before the house of representatives that they might the better estimate the needs of the province. [4] On one occasion the house even entered complaint with the governor that the members of the council were not sufficiently representative of the interests of the province and being chiefly interested in trade had prevented equitable taxation upon the merchant classes. Hence, when Governor Belcher attempted to compel the house to conform the method of taxation to a course marked

[1] III N. H. Prov. papers, 67.

[2] See section on Impost, *post*.

[3] See Prov. accounts, 1724–43, V N. H. Prov. papers, 29–32.

[4] Cranfield in 1682 was directed to permit the house to view the accounts from time to time. The same direction was repeated to Governor Allen, 1692. From the latter date the house regularly inspected the accounts without objection before voting the revenue bills.

out by the crown, he was met by an organization strongly intrenched behind custom and supported by a constituency that brooked with impatience any interference from without over local affairs.

In his inaugural address to the legislature Governor Belcher reaffirmed the doctrine laid down by Governor Bellemont. Addressing the gentlemen of the house of representatives he said: "As it is more immediately your province to look into the state of the public revenue, I shall order all the accounts from the last time you had them, to be laid before you, with proper estimates, of what may be the growing charge that you may grant the necessary supplies."[1] In accordance with the king's specific instructions,[2] the house very reluctantly consented (1730) to settle an annual salary of two hundred pounds sterling[3] upon the governor during his continuance in office.[4] Upon the fourth day of the first session Governor Belcher reported that "as the charge of the province will be growing" he had liberty "to emit from time to time what bills of credit may be necessary to defray the expense thereof." During the first session a bill providing for the emission of thirteen hundred pounds in bills of credit to be paid by a tax in 1742 was passed and signed without objection. In the adjourned session, December 3, 1730, an emission of seven hundred pounds was added. In 1731 the house

[1] IV N. H. Prov. papers, 563.

[2] Thirty-second instructions, IV N. H. Prov. papers, 564.

[3] Equal to 600 pounds in bills of credit of the province. IV N. H. Prov. papers, 570.

[4] "As to the settlement of a salary, according to his Majesties instructions we have to say that the sum therein mentioned is extraordinary, we being a small and generally poor people, and especially considering the encroachments of our neighbors and the stagnation of our trade from the want of a medium to carry it on." Address of house to Governor Belcher, Aug. 28, 1730, IV N. H. Prov. papers, 565.

and council failed to agree upon a bill for the supply of the treasury and no provision was made for public taxes.

Governor Belcher, addressing the house of representatives in 1732, called attention to the treasury, and said:

> By the small account which the commissioners of the treasury will lay before you, you will see there is no money in the treasury and I doubt not you will think it inconsistent with the safety and honor of his majesties government, or the peace and welfare of his subjects for the treasury to remain empty, and that you will therefore in duty to the King and a just regard to the people make the necessary supply to the treasury as early as may be this session.

The house replied that "our circumstances are so that if there should be an additional tax upon the polls and estates of the inhabitants of this province, it would have a greater tendency to fill the publick gaols than supply the treasury,"[1] and advised that "some other method must be found out" for supplying the treasury.

The house proposed, May 16th, 1732, an emission of one thousand pounds in bills of credit "to be brought in by a tax on the polls and estates of the inhabitants of this province in the year 1744."[2] The secretary of the council immediately returned the vote with a message from his Excellency that he "cannot make money go beyond the year 1742."[3] Finding that the house was resolved to levy no tax that he could consent to without disregarding the royal instructions, the governor called the house to the council chamber and said:

> I am very sorry the great business of the sessions [the supply of the treasury] remains undone, notwithstanding I have so early and so often recommended it to your especial care as a matter more immediately belonging to your house, yet after all I find you are resolved to make no supply of the treasury that can be agreed to by his Majesties council or by me, which is to say you will make none and this you

[1] Address to the governor, IV N. H. Prov. papers, 618.
[2] Journal of house, IV N. H. Prov. papers, 621.
[3] IV N. H. Prov. papers, 622.

persist in under pretence of the difficulty that the supplying the treasury in the usual manner might bring upon the inhabitants: But how specious and vaine is such an *amus'mt*? When a tax of (1000) one thousand pounds for the present yeare would be sufficient, and in time of war it has been common for the province to pay a tax of 2 or 3000 a year without any complaint, altho' the inhabitants were then far less in number and the land not cultivated or improved to any degree as they are now. I find therefore, gentlemen of the assembly, that the assurance that you gave me at the beginnings of the sessions . . . were only words, of course, and on which there was to be no dependence.[1]

The assembly was then dissolved, May 18, 1732.

For the next five years a new house was called annually, the towns returned essentially the same body of men, their bills were non-concurred in the council, the governor berated them for their injustice, incivility, and lack of wisdom, and then dissolved the assembly. In 1733 the house proposed an issue of one thousand pounds in bills of credit to be paid in the next ten years by a tax of one hundred pounds each year, and as a rider a twenty thousand pound loan to run for sixteen years at 5 per cent interest.[2] In 1734 the house voted three thousand pounds in bills of credit to run beyond 1742.[3] In 1735 the house entered a vigorous protest against repeated dissolutions[4] "which seems to compel to a way of acting contrary to the interest of the people we represent."[5] In the same year the house presented a bill for supplying the treasury, specifying minutely the purposes for which the sums should be appropriated and requiring that they should be used for no other ends.

[1] IV N. H. Prov. papers, 623.
[2] IV N. H. Prov. papers, 635.
[3] IV N. H. Prov. papers, 655.
[4] IV N. H. Prov. papers, 688 and 692.
[5] "Whatever different sentiments your Excellency may entertain, are very unhappy *presidents*, and that such a matter would be tho't a grievance not only by the representative body of this people, but by assemblys of the neighboring province." Address to the governor, House journal, IV N. H. Prov. papers, 688.

This bill was presented again in 1736, but in slightly modified form. It provided for an emission of four thousand pounds in bills of credit, "to be signed off" in such quantities as the general assembly should order, "to be for such payments and allowances as hereinafter in this act is expressed and for no other uses, intents and purposes whatsoever." A tax for one-half the sum appropriated (£3381 : 14 : 8) was granted "according to such rates and proportions as shall be agreed upon by this court in the spring sessions in the yeare 1742." Payment was to be made in "bills of credit of this province or any of the neighboring governments, or hemp or flax grown in the province at the current price." Each of the above bills was promptly voted down by the council and hence did not reach the governor. The council refused to sanction the bill of 1733 "because the emission of bills on loan was (as the house has been heretofore once and again informed) directly contrary to his Maj^ties^ Royal instructions;" the council further said that the house had united the two parts of the bill so that "if the thousand pounds for the supply of the treasury would not tempt the council to break thro' the King's instructions, their complyance with the King's instructions should defeat the supply of the treasury."[1] The council amended the bill of 1734 by providing that the three thousand pounds "be bro't into the assembly and burnt in thirds, viz: in the year 1740, 1741, 1742." They gave as their reason "that his Maj^tie^ had prohibited his Excelly to sign any emission of bills to be outstanding beyond that year."[2] The council

[1] Message of council to house, Mar. 10, 1733, IV N. H. Prov. papers, 643.

[2] IV N. H. Prov. papers, 655.

objected to the bill as presented in 1735[1] for the following reasons: (1) the governor's salary was not fully provided for; (2) it provided for a payment of three hundred pounds to Mr. Tomlinson (the agent of the house in London); (3) as there was no act giving bounty on hemp[2] "the council don't think it proper to grant a bounty;"[3] (4) "there is no fund for the intended emission as there may be no spring session in 1742, and if there should be, who knows that the three parts of the legislature would certainly agree;" (5) other than New Hampshire bills were specified in the tax for calling in the bills. The house immediately signified their readiness to omit from the list the bills of credit of other provinces, but otherwise adhered to their bill as presented. In 1736 the council conceded to the house all essential points at issue except one: they refused to sanction the appropriation to Mr. Tomlinson directly, but would allow it under the guise of a payment "toward the carrying on the affaire of the lines" under the direction of a committee of both houses.[4] The bill for the supply of the treasury was accepted by the council and signed by the governor as it passed the house, March 23, 1737.[5] It authorized the emission of six thousand five hundred pounds in bills of credit to be paid by a tax of four thousand pounds in the year 1741, and two thousand five hundred pounds in 1742. Bills of credit of the province, and hemp, flax, bar iron, and silver were to be received at prices specified in the act for the tax. The payment for Mr. Tomlinson was increased to five hundred

[1] IV N. H. Prov. papers, 693.
[2] House journal, Jan. 11, 1733, IV N. H. Prov. papers, 655.
[3] They add, "Some, however, are ready to come into a bounty."
[4] IV N. H. Prov. papers, 710.
[5] IV N. H. Prov. papers, 722 and 733.

pounds and the council pacified by appropriating it for the agency in Great Britain. The house secured also an appropriation of five hundred pounds towards defraying the charge of the commissioners and the committee "that are or may be appointed to mark out the boundary lines." The bill was a compromise and its passage marked a truce. The house had prevented a direct tax and had put off the day of payment for the bills of credit to the farthest limit set by the crown. They had secured appropriations for their agent in London, Mr. Tomlinson, and for the commission[1] of the boundary line, two matters in which the house was especially interested and which the governor and his party of the council accepted with ill grace.

The treasury having been supplied, the old differences manifested themselves immediately. Several further appropriations were defeated by the failure of the two houses to agree. In 1738[2] the assembly was dissolved before the treasury bill was reached. The next house was called in 1739,[3] but was prorogued until January 31, 1740.[4] At the opening of the session the governor addressed the "gentlemen of the council and of the house of representatives" as follows: "The last ships from England have brought us his Maj^ties^ declaration of war against the King of Spain and this extraordinary

[1] "If some of your *line wretches* had one about their necks, it would be but a piece of justice they richly deserve from the province. I look upon that matter at an end upon the present footing: and pray which of 'em is politician enough to know what to do next? How barbarous would it be for the people of your province to be burdened with taxes to pay the charge of their vile management." Letter [confidential] of Governor Belcher to Secretary Waldron, Aug. 23, 1736, VI N. H. Prov. papers, 879.

[2] V N. H. Prov. papers, 9.

[3] V N. H. Prov. papers, 9.

[4] V N. H. Prov. papers, 10.

event will greatly affect the commerce and safety of the province, it ought, then, to be your first care in this sessions to have the publick treasury well supplyed that the frontiers by sea and land may be put into a state of defence. You will also take the needful care for paying the just debts of the province & for the further support of the government."[1] The governor proceeded to charge the defenceless state of the province to the failure of the house to provide the necessary means. With much vigor and ability the house, in turn, defended their action in the past, and charged the negligence upon the failure of the governor to give his assent to acts passed by the house. Taking advantage of the situation, the house expressed their displeasure at the action of the governor in dissolving the last house before the appropriations were reached: they affirmed that "if now we should make that ample supply that your Excellency recommends & emit such a quantity of bills as are needful for that purpose unless the period of their being called in can extend beyond the yeare 1742, we fear it would be an insupportable burden to the people and we should bring upon ourselves a greater and more certain misery than that which we pretend to remedy."[2] Calling attention to their acknowledged position in regard to the treasury the house added: "and here we cannot but take notice that tho' your Excellency directs your speach to the council conjointly with us as to the matter of the treasury, we the representatives of the province look upon ourselves as the persons that are more immediately concerned and that we are principally and directly to be appealed to on that head."[3] Three

[1] V N. H. Prov. papers, 11.

[2] Answer to governor's message, House journal, Feb. 15, 1740, V N. H. Prov. papers, 18–20.

[3] II N. H. Prov. papers, 18.

times within a little more than a year[1] the general assembly was dissolved. During the August session, 1740, an appropriation of two thousand pounds in bills of credit, with a tax of the same amount to be laid in the year 1742, was made to aid an expedition against the West Indies.

The stout resistance of the house of representatives to the arbitrary administration of Governor Belcher[2] bore its first fruit in the appointment of Benning Wentworth as governor to supersede Belcher, December 13, 1741.[3] With Wentworth's administration complete legislative authority in the imposition of taxes was established. During his long service,[4] while he did not hesitate to question the power of the house in regard to other mat-

[1] Feb. 26, 1740, Aug. 7, 1740, and Mar. 18, 1741.

[2] The whole controversy over taxation was complicated by the boundary line contest with Massachusetts. A powerful faction was formed in New Hampshire under the leadership of Lieutenant Governor Dunbar, Benning Wentworth, Theo. Atkinson, John Rindge, and others. This faction controlled the house throughout the administration, and gradually secured an able minority in the council. The house maintained an agent at the court in London, Mr. Rindge, and afterwards Mr. Tomlinson, through whose instrumentality the crown was led to appoint commissioners to settle the boundary and afterwards to dismiss Belcher from his position and appoint in his place one of the leaders of the opposition, Benning Wentworth. With the new administration came the downfall of Richard Waldron, who had been the leading figure in provincial politics for many years, and the rise of a distinct party with marked anti-Massachusetts proclivities. A feeling of state patriotism took its rise with the birth of the new party.

[3] It is interesting to notice that Governor Belcher, in one of his last addresses to the assembly, as in his first, acknowledged the right of the house to be mainly responsible for the supply of the treasury. Address to assembly, XVIII N. H. State papers, 117.

[4] Governor Benning Wentworth took the oath of office Dec. 13, 1741. He was succeeded by his nephew, John Wentworth, June, 1767. From June, 1748, to Sept., 1752, the house was dismissed, prorogued, or dissolved thirty-seven times by Governor Benning Wentworth, owing to a difference of opinion as to their respective prerogatives. During this time the house was not legally organized. Its personnel remained essentially the same throughout.

ters, he never failed, as the records show, to address the house of representatives when the treasury needed replenishing. The same statement may be made with equal truth[1] of the brief administration of Governor John Wentworth (1767–1775).

The series of contests with the royal governors in regard to the respective rights and privileges, though subjecting the assembly at times to restrictions that savored of absolutism, had very important results beside the more obvious one of developing the idea of independence and the ability to guard their rights. The less obvious results may be stated as follows :—

1. By subjecting the legislature to an authority outside and above itself it prepared the way for a union with the other colonies under a constitutional government when the colonies had freed themselves from the yoke of the mother country.

2. It prevented the untrained frontiersmen from trying experiments in government, by obliging them to conform their laws and institutions to those tried and tested by the experience of centuries in the older civilization of England.

3. The sound financial policy prescribed by the crown and faithfully carried out by the royal governors[2] prevented in New Hampshire that period of wild and extravagant inflation of the currency through which some of the colonies less directly under the royal government passed.

[1] Governor's addresses to the house, VII N. H. Prov. papers, 125, 372, and 385.

[2] Notwithstanding Governor Belcher's arbitrary nature, his quarrelsomeness and duplicity, he was several generations in advance of the province in his thorough knowledge of financial laws. See Belcher papers, Mass. Hist. Soc. Coll.

CHAPTER II.

THE INVENTORY OF POLLS AND OF RATABLE ESTATE, 1680–1775.[1]

SEC. 1. *The Basis of Taxation.* The chief source of revenue in New Hampshire during the provincial period was, in common with the other New England colonies, the tax on the general inventory of polls and of ratable estate. The inventory comprised three elements especially enumerated in every important tax law during the period, viz.: polls, specified articles of general property, and "faculty".[2] The principle that the inventory includes only what is enumerated in the act and that all else is exempt, was followed in framing the laws and acts in regard to taxation.[3] This principle as stated above may not have been definitely in the minds of the legislators who framed the earlier laws, but the

[1] The New Hampshire towns were united with the Massachusetts Bay Colony in 1641. During the 39 years of this union Massachusetts developed a complete system of taxation out of which the New Hampshire system grew. In its main outlines the Massachusetts system was as follows: authority for levying taxes was the prerogative of the general court; the objects of taxation were polls, estate, and faculty; the valuation was fixed in some cases by general law, in others by the act of administrative officers; a method of equalization (1) between towns and (2) between counties was gradually evolved which prevented glaring inequalities in valuation; indirect taxes were imposed (1) upon all goods, with certain exceptions, imported into the county in "just proportion with estates rateable in the country," and (2) upon shipping for the support of the harbor fortifications; the assessment and collection were fully provided for, the first by a joint board of assessors and selectmen, and the second by the constables armed with adequate authority. For a full treatment of this subject the reader may be referred to Douglas, Financial history of Massachusetts.

[2] Laws and acts, 1680, 1692, 1728, 1753, and 1770.

[3] Report of N. H. Tax commission, State reports, 1876, 13.

inventories as returned by virtue of those acts disclose that the selectmen and assessors acted upon such an assumption and returned only such forms of property as were especially enumerated. Hence, a comparative study of the inventory as it appeared in the important acts of the provincial period will disclose not only the successive attempts of the legislators to tax all property capable of producing an income, but further the state of the province as regards agriculture, commerce, and the industrial arts.

SEC. 2. *The Act of 1680.* The leading members of the provincial government established over New Hampshire in 1679 had served a more or less extensive apprenticeship in the general court of Massachusetts.[1] One of their number, Richard Waldron, had served almost uninterruptedly since 1654, and had been eight times elected speaker of the Massachusetts house of deputies. Under these circumstances, considering the reluctance with which the people of the province accepted the action of the crown in separating them from Massachusetts, it is not strange that a complete body of laws was imported ready-made from the parent colony during the first session of the legislature, remodelled to suit the simpler conditions, and enacted as the legal code for the new province.

[1] Of the council: John Cutt, president, had served one session; Richard Waldron, deputy president, twenty-eight sessions; Richard Martin, one session; Christopher Hussey, five sessions; Elias Stileman, secretary, five sessions; Samuel Dalton, fifteen sessions; of the deputies: P. Coffin, four sessions; Anthony Nutter, two sessions; Thos. Marston, one session: that is, nine out of the twenty-one members of the two houses had served in the Massachusetts legislature a total of sixty-two sessions, through a period of twenty-five years. I N. H. Prov. papers, 369–372.

That portion of the laws of 1680[1] devoted to taxation required the selectmen to "take a list of all y^e^ male psons of 16 years old and upwards w^th^ y^e^ valuation of all their estates according to such rules as are past this court." The lists were to be returned to a committee for the whole province consisting of six members, one each from Dover, Portsmouth, Hampton, and Exeter, together with two of the council, "which committee shall examine and compare s^d^ list and bring s^d^ estates to an equal valuation," having respect to locality "y^t^ no towne or person may be burdened beyond proportion." The valuation as equalized by the committee was to stand as a rule or standard of comparison by which other estates rated by estimation were to be appraised. The forms of property considered to be susceptible of a uniform rating without undue injustice were to be appraised as follows: Polls 16 years and upwards, £18; all land within fence, meadow or marsh, mowable, 5 *s.* per acre; (all pasture land without fence, rate free); all oxen, 4 years old and upwards, £3; steers, cows, and heifers 3 years old, 40 *s.*; steers, cows, and heifers 2 years old, 25 *s.*; yearlings, 10 *s.*; horses and mares 3 years old and upwards, 20 *s.*; sheep above 1 year old, 5 *s.*; swine above 1 year old, 10 *s.* An omnibus clause followed, "and all other estates whatsoever in y^e^ hands of whome it is at the time when it shall be taken, shall be rated by some equal proportion, by y^e^ selectmen of each town w^th^ great care that pticulars be not wronged." Having thus provided for

[1] Province laws, I N. H. Prov. papers, 395–396. The laws of 1680 have generally been considered to have been negatived by the crown. The evidence is, however, untrustworthy, and the question must at east be held an open one. The laws certainly registered custom and seem to have been followed in the case of taxation until the Andros law, 1686. For a review of the argument pro and con see Shirley, Early jurisprudence in New Hampshire.

the taxation of the property of the farming classes, the legislators turned their attention to those whose wealth is not so closely connected with the land. "And all ships, ketches, barques, boats and all vessels whatsoever shall be rateable,[1] as also all dwelling houses, warehouses, wharfs, mills, and all handy craftsmen, as carpenters, masons, joiners, shoemakers, taylors, tanners, curriers, butchers, bakers or any other artificers, victuallers, merchants, and inn-keepers shall be rated by estimation." In case of over-rating appeal might be had from the selectmen's decision to the quarter court which was authorized to give relief. But few general exemptions seem to have been intended, and those, in general, included only such property as produced no income. Live stock under one year old, farming implements, farm products, household furniture, books, plate and jewelry, together with articles of personal wear, made up the list. Further it must be noted that in ordering a rate of one and one-half penny in the pound upon the list after it was properly made up, it was enacted that it be laid upon all persons and estates, "y^{e} presd^{t} and council, ministers and elders of churches excepted." [2]

In taking the inventory all persons and estates enumerated in the act were included, and such exemptions as are recorded above, viz., president, council, ministers and elders of churches, were made by a special act of the legislature when the tax was voted,—a

[1] By act of assembly which met May 3, 1681, it was ordered that ships, ketches, barques, etc., be rated at "20*s.* p tun". I N. H. Prov. laws, p. 40.

[2] Whether the exemption was held to mean the poll tax, the total tax, or poll tax and property more immediately concerned in securing a livelihood, is uncertain. In the tax list for 1680 the ministers and four of the council were not assessed, the president and five of the council were. See tax lists, 1680–1681.

feature that continued throughout the provincial period, and discloses how closely the representatives kept the purse strings in their own hands.[1] The necessity for stringent oaths in securing the inventory, either on the part of the officers enumerating or the persons rated, had not appeared at this time. Such regulations did not occur until considerably later.

No legislation upon the subject of the inventory is found in the laws enacted during Cranfield's administration. A rate of four pence in the pound upon all persons and estates within the province "according to the valuation thereof last set" was ordered during the session of the legislature that met at Portsmouth, November 14, 1682.[2] The prices at which "specie" was to be received in payment of the taxes were readjusted. From the above facts, in the absence of direct proof, it would appear that the general tax law of 1680 was assumed to be in force at this time and that it was obeyed by the local authorities in assessing the tax upon individuals and their property.

The Andros government, in accordance with the authority granted it by the crown, assumed powers of legislation that had, since the establishment of the New England colonies, remained in the hands of the representatives of the people. In systematizing the revenue laws for the New England colonies, the legislation of Massachusetts as it had developed during the third quarter of the 17th century, formed the basis. Upon

[1] In the first tax voted after Cranfield became lieutenant governor no exceptions were made. In the tax of 1692, his Majesty's council, settled ministers, and schoolmasters were excepted. In 1693, two provincial taxes were voted and no exceptions were made save ministers only. From this date the practice generally followed that of the act of 1693.

[2] I N. H. Prov. papers, 488.

the subject of taxation the Andros law of 1687 may properly be considered a codification of the numerous acts which were then in force in the colony of Massachusetts. As the New Hampshire provincial law of 1692 regarding taxation was a reënactment, in many cases verbal, of the Andros law of five years earlier, we may turn directly to the law of 1692.

SEC. 3. *The Act of 1692.* This act was entitled, "An act for y^e^ support of y^e^ government, repairing fortifications, strengthening the frontiers, etc." It was especially provided in the act that it should "stand in force for this particular rate for this year and no longer." The temporary nature of the act[1] was due rather to the fear that the royal governor might attempt to continue taxes without the consent of the legislature than to any dissatisfaction with its provisions.[2] Through the Andros tax law[3] it may be traced directly to the Massachusetts acts of 1647[4] and 1651, whole clauses of the two acts appearing without verbal change. The method of rating houses and lands followed the Massachusetts act of 1657.[5] The method of obtaining the list, the officers and their duties, the list of ratable estate, the tax upon skilled laborers for their "returns and gains", the tax upon the merchants and traders with the provision for abatement in case of over-rating,—all these provisions were identical with those of the above noticed acts of Massachusetts. From this rate her

[1] Province laws, 1692–1702, III N. H. Prov. papers, 164.

[2] By special act of the legislature it was revived annually in assessing taxes into the next century. When it ceased to be observed is uncertain. Its main provisions appeared in the acts of 1770 and 1772.

[3] Douglas, Financial history of Massachusetts, 51.

[4] II Mass. Col. rec., 212.

[5] II Mass. Col. rec., part 1, 288.

Majesty's council, settled ministers, and schoolmasters only were excepted. In succeeding years, when the act was revived for special taxes, ministers only were excepted. The only other exception especially mentioned included "all sorts of cattle under one year old".

Two provisions are especially worthy of note: (1) After providing for an enumeration of "all y^e^ male persons in y^e^ same town, from sixteen years old and upwards, and a trew estimation of all real & p'sonal estates," specifying in general the classes of property to be included, the law required that "all which p'sons & estates are by y^e^ selectmen and commissioners to bee assessed & Rated as hereafter Exprest, viz: Every p'son aforesaid (except before excepted) all others every male at one shilling six pence per head." Then followed a clause specifying that skilled laborers, such as butchers, bakers, etc., "shall be rated for their returns and gains proportionably unto other men for the produce of their estates." (2) To all of which is added, "& all & every p'son aforesaide (except before excepted) shall be assessed & rated at three pence in the pound for every twenty shillings, boath p'sons and estates that shall be found, according to y^e^ rates of cattle hereinafter mentioned."[1] A careful study of the act in comparison with the Massachusetts act of 1647 and of the Andros law of 1687 must convince one that its framers intended that the method of rating polls and estates should follow the method prescribed by the two acts above noted. The act of 1647 provided: "All which p'sons and estates are by y^e^ said commissioners and selectmen to be assessed and rated as here followeth, viz: Every p'son aforesaid (except magtrates) 2 *s.* 6 *d.* by y^e^ head, & all estates boath real and

[1] Laws of the province, 1692, 1702, III N. H. Prov. papers, 105–106.

p'sonal, 1 *d.* for every 20 shillings according to the rates of catall hereinafter mentioned."[1] The corresponding clause in the Andros law is identical with the act of 1647, except that the poll tax is placed at 1 *s.* 8 *d.* per head. The act of 1692 followed the wording of the Andros act, which in turn followed in this particular the act of 1647. Taking the above facts into consideration, the conclusion seems necessary that the act of 1692 intended to assess a poll tax of one shilling six pence per head, and three single country rates of one penny in the pound upon all estates, both real and personal—estates in this case including "faculty" and incomes upon trades as well as the property usually included under that term.

SEC. 4. *Modifications and Additions.* From 1692 until 1770 no general tax law is found among the statutes of the province. During the intervening period various additions and amendments were made either to adapt the existing laws to new conditions or to prevent their evasion as property gradually took on some of the more intangible forms. An act authorizing a tax of £600 in the year 1693[2] exempted only ministers, fixed the proportion among the towns, prescribed that the act of 1692 should be observed by the selectmen and commissioners in the assessment, and in addition empowered the selectmen to favor any persons "aged, decrepid or soe indigent that they are incapable of paying anything."

The same year, 1693, the old conflict between the government and the tax-dodger met the legislator. Evidently the provision in the general tax law of 1692, authorizing the assessors to rate "the estate of merchants, shop-keepers and factors . . . being present to

[1] II Mass. Col. rec., 212.

[2] Laws of the province, II N. H. Prov. papers, 188.

vew or not . . . by the rule of common estymation"—a clause taken from the Massachusetts act of 1657—failed to accomplish its purpose. The preamble of "an act to prevent concealing estates from assessors"[1] recited: "Whereas it is found by experience that several persons doe what in them lye to conceal and secure their estates from time to time and will not give in a true and perfect inventory . . . so that those that make conscience of what they doe, pay more than their proportion." It was accordingly enacted that for every pound of ratable estate so concealed the selectmen and commissioners should have power to rate the persons so concealing, when discovery was made, the sum of five shillings. The above law was reënacted in 1718,[2] but in common with the other provincial tax laws was repealed in 1792.

A significant addition to the tax laws relating to the inventory was made in 1705.[3] The cause of this addition is found in the fact that the "act enjoining every person within this province to give in a true and perfect account of all his ratable estate is found by experience not to attain the end proposed and thereby sundry of Her Majesties good subjects are forced to bear the greater burden." "For prevention thereof" the justices of the court of quarter sessions were required to appoint yearly in December one "freeholder to go through the town he belongs unto, to every inhabitant thereof," to take a just and true account of each person's ratable estate. The freeholder so appointed must be under oath either to the justices of the quarter sessions or to two of her Majesty's justices of the peace, and was authorized to employ assistants to be under like oath. The list must be re-

[1] Laws of province, 1692–1702, III N. H. Prov. papers, 194.

[2] Acts and laws of province, 1696–1725, 99.

[3] Acts and laws of province, 1696–1725, 26.

turned "some time between December and March every year". The fee for the assessor and assistants was five pounds, to be assessed and paid by the selectmen and collected in the usual manner. The centralizing tendency of this act is worthy of notice. Previous to the above act the inventory had been made up by officers appointed by the towns. The justices of the quarter sessions were appointed by the governor and thus the machinery of provincial taxation was brought more directly under the control of that part of the government immediately responsible to the crown.

SEC. 5. *The Acts of 1728 and of 1742.* In the absence of general tax laws the legislative report of 1727 and the temporary acts of 1728 and 1742 may serve to indicate the current practice in making up the inventory. On May 5, 1727, a joint committee of the legislature was appointed to "project the scheme" for a new proportioning of the province tax. On the tenth of the month the committee reported that every town should be required to bring into the general assembly at the next session in May the number of ratable polls, oxen, cows, horses, swine, houses, and improved lands in each town, and a valuation of the income of the trade within each town. The prices at which the specific articles in the above list must be invoiced were put as follows: "Polls, 16 years and upwards, 100^{d}; income upon trade, 1^{d} upon y^{e} p^{d}, the trade to be sworn to if complaint be made; offices, 1^{d} upon the product of their income; ditto on houses and lands improved at six years; income deemed to be y^{e} value at 1^{d} on y^{e} p'^{d}; every ox 4 years old at 4; cow at three years old, *s*2 : 10; horse ditto 4; swine one year old s—: 16; sheep free for encouragement. Indian and negro slaves ad valorem from

16 to 40 years."[1] The house amended the bill by making the polls ratable at 60 *d.* instead of 100 *d.*, and requiring a new proportion at least once in three years, in both of which amendments the council concurred. This act seems to have failed for want of the governor's signature.

At the May session, 1728, Governor Wentworth in his opening speech urged "that the most material thing that will lye before us is the settling the proportion on the polls, stock and rateable estate of the province so that equal justice may be administered," and recommended a committee for the purpose.[2] A bill was reported, whether from a committee or from a member the records do not specify, which stated in its preamble that there had "arisen many disputes concerning the value of y^e^ polls and the prices that estates should be set at." Therefore, "for the better clearing up of that difference and that justice may be done," it was voted that "all polls be valued at £25 per head; all tillage, meadow and marsh land at six shillings per acre throughout the province, except Kingston and Londonderry[3] which shall be valued at five shillings per acre. All oxen at three pounds each ox, or cows two pounds per cow; horses at three pounds each, swine at ten shillings, negro, Indian and mulatoe slaves at twenty each; the women slaves to be excluded; houses at one pound five shillings each; and the value of y^e^ trades of Portsmouth a thousand pounds, Dover £200, Exeter £200, Hampton Falls 50, Kingston

[1] IV N. H. Prov. papers, 295.

[2] IV N. H. Prov. papers, 295.

[3] The number of acres for Londonderry was arbitrarily fixed at four hundred.

20, Derry 5." As first reported this act was for three years, but an amendment was proposed by the council and accepted by the house that the "above scheme be for the present yeare and no longer." The act was approved by the governor and the proportion fixed on the above basis for the year 1728.[1]

From 1728 to 1742 one searches the proceedings of the legislature in vain for acts regulating the making of the inventory. The reason is not difficult to discover. From 1730 to 1741[2] the province was overtasked with two important and exacting controversies: the one relating to the boundary with Massachusetts; the other relating to the respective prerogatives of the governor and council on the one hand and of the representatives of the people on the other. With the advent of Governor Benning Wentworth there came for a time a calmer political atmosphere, and with it increased attention to fiscal matters. Governor Wentworth summoned his first assembly January 13, 1742. On the 23d of June of the same year a bill[3] "for the more equal proportioning the towns" passed the house. June 26 the bill as reported was concurred in by the council and assented to by the governor. The act invoiced "every head £18, all lands 10 *s.* per acre, a horse £3, an ox £3, a cow 40 *s.*, a three yeare old 30 *s.*, a two yeare old 20 *s.*, a yeare old 10 *s.*, swine 10 *s.*, a double house two stories 40 *s.*, a single house of one room & one story 10 *s.*, & so in proportion for other houses that are otherwise built." An "invoice table" for the town of Chester, dated February 27, 1741,[4] enumerated, in addi-

[1] IV N. H. Prov. papers, 304, 308.

[2] IV and V N. H. Prov. papers.

[3] "The invoices of the several towns and gen'l draught sent up." House journal, V N. H. Prov. papers, 165.

[4] Chase, History of Chester, 259–261.

tion to the articles specified in the act of 1741, mills and colts.[1] As this was the first inventory returned for the town it is hardly probable that the "invoice men" would have included in this list any classes of property not usually enumerated. Moreover, from a fragment of an inventory[2] for the same town taken between the above date and 1745, two men in the list were returned for "faculties". The title "mills" does not appear, neither does "houses", single or double. Whether "mills" were included under the head "faculties", as was sometimes the case, is uncertain, owing to the fragmentary nature of the invoice. A study of inventories in connection with the acts under which they were taken would undoubtedly disclose a considerable divergence between law and actual practice, since the latter was to some extent under the control of local custom.

SEC. 6. *The Acts of 1753, 1760, 1761, and 1767.* The exit of Governor Belcher was followed by a brief political calm during which the legislature registered the provincial custom regarding taxes in the act of 1742. The calm was of short duration, however. The province was soon drawn into a struggle with the French and Indians (King George's War, 1744-1748), and later into the distracting political struggle between the house and Governor Benning Wentworth respecting the right to admit new towns to membership in the house, during which controversy, from June, 1748, to September, 1752,[3] the house was not legally organized. Such political controversies are not conducive to the organization of a

[1] The list from Chester returned 152 heads, 50 double houses, 75 single houses, and, in addition to the classes enumerated in the act, 13 mills and 13 colts.

[2] Chase, History of Chester, 262.

[3] V, VI N. H. Prov. papers.

permanent system of taxation, a fact to which the state records bear abundant evidence.

There is no direct evidence that the act of 1753[1] received the signature of the governor.[2] However, as it met the approval of all the governmental authorities, except possibly of the governor, it may be examined as registering custom if not law. It provided that the selectmen should take an exact invoice in their town in March, 1753, of all the ratable male polls and ratable estate: namely, of all male polls of 16 years and upwards; of all Indian, negro, and mulatto slaves and servants (male and female) above 16 years of age; of the number of dwelling houses; of all improved lands, namely, arable, orchard, meadow, and pasture land (enough pasture land to keep a cow to be reckoned four acres); of the number of acres of each sort and kind; of all live stock, specifying the number and age except of those under one year; of all mills and the yearly rent thereof, in the judgment of the selectmen, with repairs deducted.

The acts of 1760,[3] 1761,[4] and 1767[5] were reënactments, largely verbal, of the acts of 1753, with one addition viz., that "the selectmen of the oldest adjoining town shall take the inventory of any town, district, or parish where no selectmen are." These acts had each the same purpose—to secure the inventory of all polls and

[1] Entered the house January 31, 1753; reconsidered and amended, at the governor's request, May 9, 1753. VI N. H. Prov. papers, 175.

[2] The bill passed both houses and was sent to the governor. It was returned with other bills for a minor correction; the correction was made and the bill returned. Then it disappeared from view. The records indicate that it was followed in bringing in the new invoice. See Journal of house, VI N. H. Prov. papers, 175–209.

[3] VI N. H. Prov. papers, 742. In the act of 1760 the selectmen were allowed to appoint some one to take the inventory.

[4] VI N. H. Prov. papers, 761.

[5] VII N. H. Prov. papers, 148.

ratable estate in order that a new proportion of the province tax might be made. Hence the valuation of the property was not fixed, as in the case of a general tax law. Nor does there appear to have been any rule or method of assessment fixed by the legislature for the direction of the selectmen or assessors. From the returns of the inventory a proportion[1] was established, and this proportion determined the relative part for each town of the whole of the province tax voted in any year, until a new inventory was ordered and a new proportion made.

SEC. 7. *The Acts of 1770 and 1772.* In 1770 the province was on a specie basis.[2] The debts contracted in the long and disastrous intercolonial wars had been paid partly by the English and partly by the provincial government. The War of Independence, so soon to tax the energies of the colonies to the utmost, however it may have been regarded at this time in the two centers, Massachusetts and Virginia, was not yet considered as a possibility in the province of New Hampshire.[3] Not wars, but roads, industries, trade, commerce, education, and finance furnished the chief subjects of the provincial legislation. Though the tax rate was low,[4] the tax laws

[1] See amount of ratable estate and number of polls and proportion. VII N. H. Prov. papers, 166.

[2] The return to a specie basis was a gradual one and can hardly be attributed to any definite date; 1767 to 1770 included the period.

[3] See address to the king by the house of representatives, formulated October 29, 1768, and forwarded to England April 14, 1770. VII N. H. Prov. papers, 255.

[4] "It is with the greatest pleasure that I congratulate you that no man can justly say the taxes are heavy, for the whole does not exceed 3*s.* 8*d.* proclamation money to each rateable in the province. Perhaps, if exactly known and taken, not 3*s.* 6*d.*; an instance, I believe, heretofore unexampled in any province or country whatsoever." From Governor John Wentworth's closing address to the general assembly, April 16, 1770. VII N. H. Prov. papers, 257.

were uncertain and their interpretation subject largely to the individual will of the local officers acting under the influence of local customs and the pressure of local interests.[1] Under such circumstances the legislators turned their attention to framing a temporary tax law, giving as their reasons "there is no rule established by law for making rates and taxes, so that every person may be compelled to pay in proportion to his income, but the same hath been left altogether to the arbitrary determination of the selectmen and of the assessors, which causeth much uneasiness and many complaints." The law of 1770[2] was the result. It provided that "all public rates and taxes shall be made and assessed in proportion to the amount of each person's polls, ratable estate, and faculty." Prices at which the ratable articles were to be inventoried were as follows: male polls 18 years and upward, 18 *s.* each; male slaves 16–50 years, 16 *s.*; female slaves 16–50, 8 *s.*; all live stock was divided into classes according to kind and age, and the value fixed; all improved lands were to be estimated at 6 *d.* per acre, "provided it does not exceed the sum, which the stock said land does or might keep summer and winter is estimated

[1] A petition, February 21, 1769, to the general assembly, signed by a long list of the citizens of Portsmouth, recited "that the trade and business is signally decayed, that the inhabitants are filled with the most gloomy apprehensions, especially the middling and poorer sort, who look upon themselves to be greatly distressed and aggrieved by the weight of public taxes, which by the present method of assessment fall exceedingly heavy on them, . . . for the remedying of which grievance, and that all the inhabitants may be equally taxed, which at present they are not, the selectmen of the town having no certain rule of law to proceed by as they have in the other provinces on this continent, . . . your petitioners request that you would pass a valuation act obliging every inhabitant of the town to give to the selectmen or assessors a just and true valuation, upon oath, of all his estate, real and personal, under improvement, that each member of the community may bear his equal proportion of public charges of government." XIII N. H. Prov. papers, 278.

[2] Laws, 1824, II, 218.

at;" all houses, mills, warehouses and other buildings, wharfs, and ferries were to be estimated at one-twelfth part of their net yearly income; all stock, whether money at interest or improved in trade, was invoiced at the rate of one per cent; finally, "any person's faculty may be estimated by the selectmen of each town or parish at their discretion not exceeding twenty pounds ratable estate." The invoice was to be made in eight columns: the first for the amount of each person's polls; the second for the amount of each person's improved lands; the third for the amount of slaves; the fourth for the amount of live stock; the fifth for "other real estate"; the sixth for stock at interest or in trade; the seventh for faculty; and the eighth for the sum total. The invoice was to be "revised, renewed and settled annually" between the first of April and the first of July. In case any one should remove from the town or parish where assessed he was to pay the tax where first rated. Further, following the Massachusetts law of 1651, it was provided that "if any person or persons shall come from any place out of this province to reside or inhabit in any town or parish in this province for the benefit of trading, although for less time than a year, such person or persons shall be rated one year's rate for the polls and such stock as they bring, either on their own account or commission, during the residence." In order that there might be no escape from the provisions of the law, the selectmen were empowered, in case of refusal to render under oath an account of all articles of ratable estate as enumerated in the act when required, to doom equitably the person according to their judgment, from which doomage there was no appeal.

In its main features this law, which was continued in force three years, was reënacted in 1772 for a second

period of three years, with the following changes: (1) Slaves were not rated after forty-five years of age; male polls and male and female slaves were invoiced, respectively, 12 *s.*, 10 *s.*, and 5 *s.* (2) Live stock remained as in the list of 1770, except that it was especially stated that no cattle or horses were to be accounted one year old until they had been wintered two winters. (3) The distinctive provision appears in that clause of the law regarding land, a feature that continued until 1833 as the peculiar mark of the New Hampshire system of taxation.[1] This clause provided that "All improved lands to be estimated as follows, viz.: Orchards, one shilling per acre, accounting so much orchard as will one year with another produce ten barrells of cider one acre; arable land, eight pence per acre, accounting so much land as will produce twenty-five bushels of grain to be one acre; mowing land eight pence per acre, accounting so much land as will produce one ton of hay, one year with another, to be one acre; pasture land three pence per acre, accounting so much land as will summer a cow to be four acres." (4) Mills, wharfs, and ferries were to be rated at one-twelth part of their net yearly income. (5) Stock, either money at hand or at interest, "more than the person gives interest for," and all money improved in trade was reduced to one-half of one per cent. (6) Right of appeal was granted to any person who considered himself to be overrated in respect to faculty. (7) Another noticeable change consisted in granting liberty to every town and parish "at their annual meeting" to rate all houses, warehouses, and other buildings "so as they are not estimated at more than one-twelth part of their net yearly income." The provision in regard to the doom-

[1] See Wolcott's report, State papers, Finance, Vol. 1, 437.

age of property when the person refused to give in a list under oath was evidently found to be too iron-clad, for an exception was made granting right of appeal for those who were willing to make oath that they were unable to make such inventory. All other features of the act of 1770 were retained intact, and, with the addition of a clause empowering the selectmen to make "reasonable and just abatement", the law was complete.

Several features of these two laws deserve especial attention :—

1. They were passed in a time of peace, when no special stress was laid upon the taxing resources, and therefore they represented the crystalized experience of nearly one hundred years' endeavor to lay taxes in proportion to each person's income.

2. The tax upon polls, "faculty", and houses, while still prominent, showed a tendency toward relatively less importance, at the expense of stock in trade and money at hand or at interest, and to some extent of the common forms of general property.

3. The act of 1772 introduced for the first time in the colony the method of rating improved land according to its income, the only feature of taxation which is distinctly the creation of New Hampshire legislation.

4. The principle that no property is taxable unless especially enumerated had been established. This accounts for the fact that the list of exceptions so prominent in other states was absent here.

5. This act, with sundry additions and modifications, continued as the basis of the New Hampshire tax system until the adoption of the valuation system in 1833, thus disclosing that it was temporary only by virtue of the act of the legislature.

CHAPTER III.

THE PROVINCIAL REVENUE.

SEC. 1. *Taxes on the Inventory.* The first instance of a provincial tax made by the legislature of New Hampshire occurred in 1680, soon after the passing of the first tax law. It took the form of "a rate of 1½ *d.* in ye pound upon all persons and estates" with certain exceptions, "according to ye valuation made by this assembly."[1] The method of making the tax on the inventory by rates was soon abandoned, and as early as 1687[2] the tax was placed at a definite sum and apportioned among the towns by the legislature. The amount raised in different years and different periods varied very greatly, according to circumstances. In the first place, the apparent difference was greater than the real owing to the inflation of currency and its consequent depreciation in times of special stress; secondly, the amount voted was always considerably in excess of the wants of the treasury, owing to the expenses, losses, and depreciation of goods taken for taxes and sold in the open market for money; and finally, from the quantity of legislation in regard to the collection and from an inspection of the treasurers' accounts, fragmentary though they be, the conclusion must be reached that whether legally abated or not there was always a considerable proportion of the taxes assessed which the constables were unable to collect.

The uniformity of the province tax from one year to

[1] I N. H. Prov. papers, 399. The rates were usually payable in "specie" or goods at specified values, and an allowance of one-third was made to those who paid in money.

[2] I N. H. Prov. laws, p. 175 *et seq.*

another was impaired by the improvidence of the legislators, who rarely replenished the treasury until obliged to do so by the accumulation of debts or obligations which they were unable to postpone. A similar effect was the result of the spirited and prolonged conflicts between the house and the governor, who was usually backed by the council, in which conflicts the house habitually used their power over the budget to coerce the governor. Up to 1742 the usual tax was £500 or £1000 annually, the latter sum not at all unusual; and under extraordinary circumstances, £2000 or more. During the French and Indian Wars, 1754–1763, the annual tax went as high in 1755 as £10,600, a sum equal to about £4240 in Massachusetts money.[1] The tax continued at about £10,000 for several years, but gradually dropped to the normal amount as the province returned to specie payments, 1770, and the taxes were paid off. The method taken after 1712 to render the taxes somewhat uniform consisted in issuing bills of credit either to be called in by a tax laid in succeeding years or to be used as a circulating medium bearing interest, a subject that will be treated in a separate section.

The proportion of revenue raised by taxes on the inventory was large. Out of a total revenue of £2045 in 1724, £1028 was raised from the towns in taxes, £899 from bills of credit, and the remainder was divided between excise, impost, and interest on bonds. For the two years 1723-1724 the excise was farmed out for £300; in 1724 the tax to draw in bills of credit, voted several years before, was £1076. In 1755, when the highest tax was laid, the revenue from the excise was a

[1] The general assembly, March 4, 1756, in payment of salaries voted to "reckon 15 shillings of our money equal to 6s. of Massachusetts." I N. H. Prov. papers, 486.

little over £930. From these and similar instances it seems wholly within limits to estimate that from two-thirds to seven-eights of the total provincial revenue during the period under consideration was derived ultimately from taxes upon the polls and upon ratable estate.

SEC. 2. *Taxes on Lands.* The single attempt to levy a general tax upon all lands laid out into townships, improved or unimproved, illustrates the theory of taxation held by the people and their representatives during the provincial period. When this occurred, 1755-6, the province was bearing a load of taxes more than double the usual amount. The resources of the future had been heavily pledged through the issue of bills of credit, and the instructions of the crown to the governor forbade their further emission unless they should be called in during the years already too heavily burdened. Large tracts of land had been granted out into townships, in which grants the governor habitually reserved the two choicest shares for himself, and the members of the council were often among the grantees.

For twenty-five years the towns had been accustomed to an occasional levy upon the lands of the town for special town purposes.[1] The house, as representatives of the people, resolved to try the same method on a larger scale. They first moved January 15, 1755, by a vote "that there be a tax of one penny per acre laid upon all lands laid out into townships improved or unimproved."[2] To which the council immediately "offered objections why they could not concur." Again on the 28th of November, 1755, the house sent up a vote of like

[1] Chase, Hist. of Chester, 75; Worcester, Hist. of Hollis, 30.
[2] VI N. H. Prov. papers, 341.

tenor, affirming that a large sum must be raised to defend the frontiers and that it "appears reasonable that the lands protected and benefited thereby should pay a proportion to the charge of protection and defence thereof."[1] Again the council immediately refused their assent and this time gave their reason, viz.: "They look upon it as unjust for thereby the poorer sort of people would pay the biggest tax" and instanced "Chester, Londonderry, Nottingham, Barrington, etc., etc." Not being able to move the council, the house next attempted the same plan by the use of a "rider", a method now familiar in our legislatures.

The frontiers were in imminent danger, as the French and Indian War was then most threatening. The governor and council were urgent that troops should be dispatched to protect them. The house answered that it was their "unanimous opinion that a suitable number of men be posted on the frontier, provided that all branches of the legislature can agree upon any suitable way to defray the charges thereof."[2] They proposed an excise and impost act, and innocently attached their "tax of one penny per acre upon all improved and unimproved lands granted or laid out within the province."[3] The council concurred with amendment that the tax include only the improved land.[4] This was not the land the house wished to reach, and they in turn refused to accept the amendment. At this point the governor, Benning Wentworth, with much tact urged the granting of means to equip a second expedition against Crown Point in connection with the other colonies, and also to complete the grant for the frontiers. Notwithstanding

[1] VI N. H. Prov. papers, 448.
[2] VI N. H. Prov. papers, 472.
[3] VI N. H. Prov. papers, 472.
[4] VI N. H. Prov. papers, 473.

the combined influence of the governor and council, the house, in a characteristic reply, signified their desire to aid in the Crown Point expedition and added: "We can think of no way so just and equitable for defraying the charge of the frontiers as that in our vote of ye 23d of January last, and therefore we must in faithfulness to our constituents beg your excellency to excuse us from any charge on that account, unless the lands benefited thereby bear a part therein agreeable to s[d] vote and which was the way the house expected to pay the expense when they accepted the report of the committee of both houses." [1]

The council prevented a general land tax, and the house prevented an appropriation for the frontiers. Two theories were presented: the house clearly based their action upon the benefit theory of taxation; the senate theirs upon the income theory. From these points of view each may have had equally safe ground upon which to stand. Further, the council were undoubtedly more conservative and less ready to inaugurate an entirely new method of taxation for provincial purposes. Finally, it is probable that both parties were selfishly interested: the house, as the representative of the people, in endeavoring to throw the greater burden of taxation upon the wealthy holders of large areas of land; the council and the governor, as large holders of land, in preventing the plan from taking effect.

SEC. 3. *The Excise.* On the 10th of June, 1680, the council granted licenses "as formerly" [2] to ten persons on payments varying from nothing to eight pounds

[1] VI N. H. Prov. papers, 486.

[2] In 1652 Portsmouth laid an excise upon wines, the revenue being paid to the treasurer by those licensed to sell. Adams, Annals of Portsmouth. On April 1, 1680, an officer was appointed by the new government "to receive the powder and customs as formerly, and two

per annum, the total revenue derived being £38 10 *s.* 1 *d.* The license system seems to have been continued until the important act of 1687 through which the Andros government imposed a uniform system of imposts and excises upon all New England. In 1692 Massachusetts reënacted the Andros law, and a little later in the same year New Hampshire continued the Andros system by adopting the Massachusetts statute upon imposts and excises with few verbal changes. The act provided for an excise on all "wines and brandy, rum and other distilled liquours, cyder, ale and bear" sold by retail within the province. All retailers must obtain a license from one or more justices of the peace, which license must be renewed quarterly. A retailer was defined to be one who sold less than two gallons "strong water" or a "quarter caske" of wine, and a fine of five pounds was fixed as the penalty[1] for selling without a license. The rates were fixed at fifty shillings for every butt of wine, 2 *s.* 6 *d.* for every hogshead of "cyder, ale or bear", current money, and so in proportion. The act was a temporary one, and was renewed from time to time for short periods until 1732, when a permanent excise act was passed.

By the act of 1732[2] the excise was laid upon "wines, rum and other spirits, cyder and perry" retailed and sold in less quantities than one barrel or quarter cask. The rates were eight pence per gallon on wines, rum, or other spirits, and eight pence per barrel for cider or perry for tavern keepers, inn holders, or other retailers; for retailers out of doors, six pence per gallon on any

years later, October 13, 1682, the treasurer and collector of customs were required to submit their accounts to the secretary of the council to be audited."

[1] III N. H. Prov. papers, 172.

[2] Laws, 1761, p. 134.

wine, rum, or other spirits. The tavern keepers and retailers were allowed twenty per cent for wastage and had to give an account of their sales quarterly under oath. Upon refusal to take the oath a fine of ten pounds was assessed, which would, if paid, stand in full satisfaction of the quarterly excise. Retailers selling less than twenty-five gallons at one time had further to obtain a license from the court of general sessions of the peace, and a penalty of five pounds was provided to be divided into three parts; one-third to the government, one-third to the receiver, and one-third to the informer. One credible "evidence" [witness] was deemed to be sufficient proof. Further, any witness duly summoned had to give evidence under oath or forfeit five pounds to be divided as above. A clause disclosing the difficulties attendant upon enforcing such an act in a seaport town provided that any one selling liquors from a trading vessel in less quantities than at wholesale should be fined five pounds, to be divided as in the preceding cases. The law of 1732 continued in force until 1792.[1]

From the beginning of King George's War, 1744, to the conclusion of the French and Indian War, 1763, the excise was increased by temporary acts.[2] The increased rates, however, do not seem to have more than kept pace with the depreciation of the currency. Finally, by the temporary act of 1767,[3] the rates were fixed in lawful money at one-third those of the act of 1732, and the fines were placed at two pounds in lieu of five pounds. A novel provision of the act defining sales discloses the attempts to avoid the law. The bill provided that all "giving, lending, or commuting of any said liquors, either as

[1] Laws, 1805, 405.

[2] V N. H. Prov. papers, 208, 767, 340; VI *Idem.*, 733.

[3] Laws, 1761, temporary acts, 33–34 (the year of return to specie basis).

a reward or for labor or encouragement to labor, that may diminish the price of hire or wages or the charge upon any other commodity or thing whatsoever, whereby the person so giving, or lending, or commuting may directly or indirectly be remunerated or reimbersed therefore shall be esteemed, construed and adjudged to be a sale,"[1] and hence under the provisions of the law.

The total annual revenue derived from the excise during the period 1680–1775 varied considerably,[2] but had a growing importance. For the two years 1723–5 it produced £300;[3] for a like period, 1743–5, £929.[4] For the years when taxes were highest, 1755, 1756, 1757, the total revenue was £3515 12 *s.* 6 *d.*, a sum equal, approximately, to £1400 in Massachusetts money of the same date.[5] With the return to a specie basis, however, the excise revenue was relatively more important. For the year 1772 the receipts were £934 lawful money,[6] or about double the highest revenue from the same source during the period of inflation.

SEC. 4. *The Impost.* On April 1, 1680, the general assembly legally continued[7] the Massachusetts sys-

[1] Laws, 1761, temporary acts, 34.

[2] From 1680 to 1720, when the impost was common, the revenue derived from imposts and excises does not appear to have been kept distinct, and hence no accurate statement can be made as to its amount.

[3] IV N. H. Prov. papers, 184.

[4] V N. H. Prov. papers, 208.

[5] Reckoning six shillings Massachusetts money equal to fifteen shillings in New Hampshire bills.

[6] VII N. H. Prov. papers, 302.

[7] Not, however, without a controversy characteristic of the province. On the 24th of the preceding month, Captain Walter Barefoote was summoned before the council "and examyned by w^t pow^r he set up a paper concerning customes to be entered with him, or whether he did set up such a paper there that All persons should enter with him." He answered "that he did set up such a paper and must own it." He was ordered to appear the next day, when the following "indictment" was read to him: "1. That you have in a high and presump-

tem of customs duties by an act appointing Captain Elias Stileman "to receive the powder and customs as formerly."[1] At the same time Richard Martin, the treasurer of the province, was authorized "to take the entry of all ships and vessels from foreign ports and to see to and look after ye act and trade of navigation."[2] The provincial customs of the first year, according to Chalmers, arose from taxes on wines and liquors, "and one penny a pound of the value on the first cost of the goods imported."[3] Two provisional acts of March 10, 1682, throw light upon the tariff history of the province: (1) It was ordered that "all ships . . . or other vessels

tuous manner set up his maj^ties^ office of Customs declared it by a paper in a public place on Grt Island for all Psons concerned to come to make the entries with you at this Pt, not having leave first from ye president and council of this province so to doe, w^ch^ shews high contempt, being since his Maj^ties^ Authority was set up in this place. 2ly. That hereby you have disturbed and obstructed his Maj^ties^ subjects both in greater and smaller vessels and such as pass but from towne to towne harbr to harbr Near adjoining on these occasions, but must enter and take their passes with and from you, as proved by testimony. 3ly. Yor preemptory Answrs That when any question was asked you you would Answe^r^ My Name is Walter." Barefoote was sentenced "to pay a fine of ten pounds in money forthwith and stand committed until it was paid." XIX N. H. State papers, 665–6.

Nearly two years later, March 9, 1682, Barefoote was again brought before the general assembly for seizing a vessel "without any power from ye authority under pretence of His Maj^ts^ name." Upon examination he answered that he had instructions to seize from Edward Randolph, Esq., in order to a new trial. The council ordered a fine of £20 "which they do respit during their pleasure upon his good behavior." "Two accomplices, Wm. Hoskins and Thos. Thurton, were fined £5 each upon like terms." The three were required "to pay 20*s.* in money for fees by equal portions equally or stand committed." XIX N. H. State papers, 683–684.

[1] XIX N. H. State papers, 611. The revenue from customs for the year 1680 was £61 3*s.* I Chalmers, 511. The total revenue from the province rate for that year was only £87.

[2] XIX N. H. State papers, 611.

[3] I Chalmers, 511. The same authority says that forty-nine vessels of from ten to one hundred tons burden entered the port of Portsmouth during six years. See also I Belknap, 187.

belonging to the inhabitants of ye Massachusetts colony, may have free egress and regress into any of the ports or harbors within this province and have free liberty to trade as before our late charge, without being liable to pay powder money or any other duties, but what our own inhabitants are liable to pay for their vessels: Provided ye like order be made by ye general court of ye Massachusetts colony respecting all vessels belonging to the inhabitants of this province."[1] The order was to be understood to apply to vessels coming from foreign ports as well as from the other provinces. (2) It was also enacted "that what goods or merchandise being imported into any of their or our harbors, having paid ye customs at importacion shall not be liable to pay any further or other custom than aforesaid, upon transportation to any of their or our ports; it appearing by certificate from ye collector from ye place whence such goods came that ye custom is paid. This order not to take place until the like act be made by ye general court of ye Massachusetts colony." In connection with the subsequent history of the two provinces relating to intercolonial trade these acts are significant.[2]

The legislature does not appear to have taken any

[1] I N. H. Prov. laws, p. 46.

[2] From a report to the Lords of Trade made by the council (1682) the following facts regarding the trade of the province are pertinent: "The trade of the province is in masts, planks, boards and staves, and all other lumber, which at present is of little value in other plantations to which they are transported, so that we see no other way for the advantage of the trade, unless his majesty please to make our river a free port. Importation by strangers is of little value, ships commonly selling their cargoes in other governments, and if they come here usually come empty to fill with lumber, but if haply they are at any time loaded with fish, it is brought from other ports, there being none made in our province, nor likely to be until his majesty please to make the south port of the Isles of Shoals part of our government, they not being at present under any." [United to the province 1686.] I Belknap, 184–5.

action regarding the revenue arising from imports or exports during its brief and intermittent sitting while Cranfield was acting governor. Cranfield, however, by act in council, attempted with one hand to throw Massachusetts into further disfavor[1] with the crown, and, with the other, to fill his pockets with license fees and port dues. An act dated October 22, 1683, to take effect April 1, 1684, charged Massachusetts with evading the navigation acts and "drawing all the ships to Boston" to the injury of the trade of the province and the discouragement of the English merchants and mariners; affirmed that it was the duty of the governor and council not only to observe said act but also "to use all the care and diligence to prevent the said abuses and discountinance them in others;" and prohibited, for the above reasons and the advantages that would accrue to the province, the ships and vessels coming "from the colonies to the Massachusetts Bay under the burthen of 100 tons (unless allowed and licensed by the governor by a writing under his hand) from the loading any boards or timber in this province."[2] A further provision "for the encouragement of shipping and navigation of the merchant and seamen of England" ordered that for a period of three years "all vessels coming from all other of his majesties plantations of what burthen whatsoever shall have free liberty to load and carry

[1] I N. H. Prov. papers, 463-4. "The said colony have, instead of discontenancing all persons that have infringed the said laws and acts, protected and encouraged them in their illegal importations and made these ports places of reception for all foreign prohibited commodities not only as to what hath been consumed within their jurisdiction, but by the sloops under pretence of loading timber (which we find very injurious to the trade of the province) drawing all the ships to Boston, and thereby supplying all the neighboring colonies, totally to the discouragement of English merchants and mariners, and thus we know by experience, having made seijure and condemnation of some prohibited commodities coming from Boston."

[2] I N. H. Prov. laws, 83.

away any boards, timber, or other commodities to any other of his majesty's plantations only paying the usual rate for powder as is and has been usually paid in Barbadoes."[1] In the brief, 1684,[2] containing the substance of the affidavits, objections, and replies at the hearing before the Lords of Trade in regard to Cranfield's maladministration of his office, he is charged with setting up a license office requiring vessels and sloops from all the other colonies to enter and pay certain fees.[3]

The first systematic act relating to imposts enforced in New Hampshire was the Dudley law of 1686. Its general features, as was the case in the act relating to direct taxes, reappeared through the Massachusetts law of 1692[4] in the first provincial customs act of 1692.[5] This act combined three revenue bills in one; the excise, impost, and tonnage dues. The impost was laid both on goods and wares, and on wines and liquors. Wines were subdivided into three classes and rated as follows: "Fial wines or other wines of the Western Islands, 10 *s.* money per butt, Maderia wines, 13 *s.* money, pipe or butt; sherry, sack, Mallego, Cannary, Mascadalls, tent and Allegant, 20 *s.* per butt; brandy, rum and other strong distilled liquors 10 *s.* hhd.", and so on in proportion. All figures had to be duly entered and the quality and quantity given under oath if required. Proof of evasion of these regu-

[1] I N. H. Prov. papers, 463–4.

[2] I N. H. Prov. papers, 564–9.

[3] "7th November, 1684, Daniel Gent, master of a sloop of Boston, sweais he paid 2 *d.* for 100,000 feet of boards landed at Broad Island in Governor Cranfield's time and never anything before." "John Usher proves the same paid for the like, though Mr. Cranfield had by letter promised they should go free." Wm. Ardel proved the same for the like. From brief cited above, 568.

[4] The wording is identical for the most part. A careful comparison indicates that the New Hampshire act was copied from the Massachusetts act with few changes.

[5] Prov. law, III N. H. Prov. papers, 168–173.

lations by two credible witnesses caused a forfeiture of the goods. Further, the goods could be landed only at certain specified wharfs upon like forfeiture to be divided as in the case of the excise. In case the same liquors were exported out of the province, except into the province of Maine, within three months, two-thirds of the duties paid were returned, oath having been made as to the identity of the liquors and that the time limit had been observed. All goods imported were taxed one penny in the pound with certain important exceptions, viz: Fish, sheep, woven cotton, wool, salt, and all sorts of provisions. Goods were to be valued at an advance of ten per cent above that at the place from whence they came. Molasses and sugar were rated by the quantity, four pence for every hogshead of molasses, and eight pence for the same quantity of sugar. This act was continued annually by the legislature until 1711, with some changes.[1] On July 21, 1702, a vote passed the house, which was concurred in by the council and consented to by the governor, that a tax be raised on all sorts of goods and merchandise and all manner of lumber[2] that "shall be transported out of or imported into this province," to continue for one year. In 1703 the act[3] was renewed for one year with additional duties on

[1] The rates and the list of dutiable goods were changed by an order of July 30, 1686. This order may not have been approved, however. I N. H. Prov. laws, p. 111.

[2] In 1695 Lieutenant Governor Usher proposed a duty upon all boards and staves exported, together with additional duties upon liquors (pro rata with Massachusetts), to which the house replied that they would consent to an increase of the impost upon wine and to certain export duties upon lumber ranging from 2*d.* to 1*s.* and upon mast yards and bowsprits transported from beyond the seas from twenty inches in diameter and upwards 4*d.* per inch, provided that the governor and council would consent to a petition to his Majesty to annex the province to Massachusetts. III N. H. Prov. papers, 36.

[3] III N. H. Prov. papers, 249.

"rum and other things not mentioned in said last act." A clause specifying that "masters be upon oath as to how many thousand they transport," and that the "receiver be upon oath as to lumber transported and goods imported" indicates the difficulties experienced in gaining a true account of the commerce liable to taxation under the law. In his message to the house, August 11, 1704, Governor Dudley said: "I know no better article for the advancement of the revenue than that of lumber, which was no hard thing these last years . . . and I am to tell you that laying of that tax is very well taken by the Right Honorable the Lords Committee of Trade and Plantations. . . I judge it the most equitable and easy method, and shall take care it be better collected than heretofore."[1] August 23 the house replied: "Also reviving the lumber act we find it not to answer the proposed end, it also bearing so hard upon those concerned in lumber, but are willing that all public charges arising in this province shall be defrayed by rate on poles and estate."[2] In 1711, notwithstanding the advise of Governor Dudley,[3] the impost act was allowed to expire.

At the spring session of the legislature (May 5, 1712), the governor again called the attention of the house to the "impost which was abated last year and is certainly a surprise to the government at home, for there is everywhere a duty upon shipping and trade for the support of the public charge in the ease of the land tax which is always a heavy charge upon the country."[4] Considering the almost universal practice of the time in respect to taxing trade and the weight of

[1] III N. H. Prov. papers, 291.
[2] III N. H. Prov, papers, 294–5.
[3] XIX N. H. State papers, 22.
[4] XIX N. H. State papers, 30.

the royal authority, even though expressed in a wish, the vote of the house, October 14, 1712, "that there be no impost nor duty on exportations in ye province but that it be a free port,"[1] indicates that the representatives of the people possessed a keen sense of their own interests. The action of the "commons"[2] was so surprising that Governor Dudley again urged the laying of the duties. July 13, 1713, he said: "I must again with all earnestness recommend to you ye Renewal of the Impost . . . there is no government or colony belonging to ye Crown of Great Britain y't Pretends to an open Port or y't doe not bring in ye trade and merchandyse of their province to aid the land tax for ye payment of ye heavy charges of ye war which is as needful in this province as in any other of her Majesties governments ye neglect and inequality whereof will I fear justly offend her Majesties as well as disturb ye other governments on ye shoar of America."[3] The house persisted in their plan and voted again (1713) that "there be no impost for ye ensuing year."[4] In 1714, however, upon the presentation of the state of the province by the governor that the regular tax upon polls and estates would be required "to draw in ye bills of credit and thereby discharge the province debt," an act[5] was passed placing a moderate impost

[1] XIX N. H. State papers, 38.

[2] This title is often used in the legislative records in referring to the lower house in New Hampshire in the early part of the eighteenth century.

[3] XIX N. H. State papers, 43.

[4] XIX N. H. State papers, 44.

[5] XIX N. H. State papers, 52. To be in force for one year from June 10, 1714. The imposts were: rum, 8*s.* hhd.; ffyall wines, 5*s.* pipe; Maderia, 2*s.* pipe; molasses and sugar, 2*s.* hhd.; tobacco, 3*s.* hhd., with drawback of ¾ if exported within six months. The duties were: export boards, 1*s.*; pine planks, 3*s.*; red oak hhd. staves, 6*d.*; white oak staves, 9*d.*; white oak pipe staves, 1*s.*; to which was added an impost of £10 on Indian staves, intended to be prohibitive.

upon rum, wine, molasses, sugar, and tobacco, and an export duty upon lumber manufactured into boards, planks, and staves. By a subsequent act, April 27, 1715, this tax[1] was continued in force until June 10, 1716, so far as it concerned "the duty on rum, wine, sugar, molasses, and tobacco". The drawback limit for exportation of the liquors was reduced to three months.[2] In 1716 the governor again strongly advocated an impost, "what every government in the world hath but we," to which the house, after an experience of two years with the impost, replied that in their opinion "the

[1] XIX N. H. State papers, 62.

[2] As it has been charged that New Hampshire was the offending party in the tariff war between that province and Massachusetts, which culminated in the prohibitive acts of the latter colony in the year 1721, a brief review of some of the facts in the case seems necessary. On the 22nd of July, 1714, the council sent the following message and vote to the house: "Information being given to this board that there is offence taken by y^e^ Assembly of her Majesties Province of y^e^ Massachusetts at the act of impost and duty's of emportation lately made in this province, ordered that Samuel Penhallow and Marke Hunkinge, Esq^rs^ be a committee from this Board to joyne with a committee of ye House of Representatives to meet and confer with such gentlemen as the Govt of Massachusetts shall direct for that purpose to take away any just offence at ye said act for that we would avoy'd any misunderstanding between the two governments of her Majesties Province so happily united for the common safety and preservation of each other. Past in the council *nemine contra dicente*. To which it is answered viz^t^ 1 We are humbly of opinion that it is inconsistant with ye honor of government of this Province to appoynt any committee to be chosen to confer with such of the Massachusetts, about any law of this Prov. If they are agrieved by any act upon their intemation thereof and desire to treat thereon we will then appoynt a committee to confer with theirs. But in y^e^ meintime we pray his Excellency y^e^ Governor to give them all imaginable assurance that we had no intention to affront or injur their government by passing any act and hope they'l have no ill resentment thereof." Six days later, July 28, the house appointed two of their body to be a "committee to joyn with y^e^ committee of y^e^ Massachusetts about their being offended at any law of this Province and make return thereof to the General Assembly."

public charges can most reasonably be borne by an equal tax on all persons and estates." On December 5, 1716, the assembly was dissolved and a new house called, which met January 10, 1717. This house contained eight old members and nine new. Their first act was an impost upon "all liquors imported into this province from beyond the sea"[1] and a duty of "one penny sterling in the pound" upon all European goods. The council at once sent up a vote for a duty on the exportation of lumber. Neither bill became a law.

The house prepared and presented to the governor an able remonstrance against certain conditions that had crept into the council: (1) That originally the council had been chosen proportionally from the towns, but that then "just and good men are laid aside ye whole number residing wthin two miles or thereabouts of one another which hath been the occasion of great difference and animosities and which may further produce inconvenience if not timely prevented, ye council consisting principally of merchants and traders, whereby the revenue due to ye crown by an impost is wholly obstructed." (2) That "tho' we have endeavored an impost several times, it has been opposed by those now in y^{e} council so y^{t} y^{e} burthen lyes wholly on ye farmers and laborers who have till of late lived in ye hazard of ye lives and many brought to desolation and poverty: whereas ye settlement on our late Gov^{r} was on a fund of excise and impost w^{ch} impost is now wholly deneyed and the trading part no ways assisting in lighting ye land tax;" (3) "and humbly pray . . . that councilers and courts may be in each town as formerly and that we may not always

[1] Rum, 10 *s.* hhd.; Ffyall wine, 8 *s.* pipe; Maderia wine, 10 *s.* pipe; Canary or Posada, 16 *s.* pipe. XIX N. H. State papers, 98.

be outdone by Gent[n] in trade to the great discontent and uneasiness of the farmers and laborers."[1]

The house asked that this remonstrance be laid before the king by the governor, Samuel Shute. The governor very shrewdly referred the matter to the council, "men more knowing and acquainted with the affairs of the province" than himself. To the specific charges the council replied: (1) That it had been his Majesty's pleasure to have his council of Portsmouth "in as much as they were gent[n] of the best quality and greatest ability to serve the government in that station;" (2) "That the newly appointed councillors had for many years served ye public in ye Assembly to very good acceptance, and did constantly study and endeavor ye benefit and ease of ye people . . . and never opposed any act of impost but when they could not obtain an act of export, w[ch] is ye practice of Great Britian y[e] Gov[r] assuring us that he himself payed twenty-six pounds sterling for ye export of his own goods, they being ye manufactures of England and now were willing to come into an impost if ye representatives would have concurred with ye vote of ye council for an export."[2] (3) That the judges originally were of Portsmouth and that appointees from Portsmouth took the place of others from the same town.[3]

The house was then dissolved, January 28, 1717.[4] A new house was called, but no further attempts to revive the impost were made during the year. At the opening of the spring sessions, April 29, 1718, Governor Shute

[1] III N. H. Prov. papers, 675–6.

[2] The council added "that tho' they are now classed as traders and merchants that they had as good and better estates in lands and land securities than any now in sd house."

[3] III N. H. Prov. papers, 677–8.

[4] III N. H. Prov. papers, 679.

said: "I am glad to find that those coals of contention which were kindled and blowing up amongst us are by your care in your several stations so happily extinguished. All that I have of moment to offer to you at this time is that some speedy method might be thought on, for ye encouragement of raising hemp and other naval stores, w^ch^ will be very acceptable to ye court of Great Britian and highly advantageous to this province as also that there may be an impost and excise W^ch^ I am informed hath been your constant practice before my arrival in this government."[1] In accordance with the usual custom of replying to the governor's message the house answered:[2] "And as to the act of impost, we are of opinion that the charges of the government are more easily defrayed by way of tax upon all persons and estates, and that its most for ye interest of all his Majt^ies^ good subjects of this Prov. to have a free port this year. But we think an act of excise very reasonable and desire one may be p'pared accordingly."[3] The subject of imposts and export duties is not referred to again in the legislative records until May 17, 1721, when Lieutenant Governor Wentworth gave as his opinion that "the keeping our port open is a disadvantage to y^e^ government so hope ye will take it under your consideration."[4] The house prepared a bill and sent it to the council July 11, providing for prohibitive duties upon wines and liquors imported "except from place of growth" and export duties of 2 *s.* per thousand upon lumber except upon that exported to

[1] III N. H. Prov. papers, 732.

[2] The membership of the house was almost identical with that of the preceding house. What influences changed their minds regarding the impost is problematical.

[3] III N. H. Prov. papers, 725; XIX *Idem*, 116.

[4] XIX N. H. State papers, 154.

Europe and to the West Indies. The bill proved too radical for the council and failed to pass that body. Two days later the house amended the bill[1] by placing the usual impost duties upon wines and liquors imported from their place of growth and adding an export duty upon fish of 12 *d.* per quintal, "except what shall be exported to foreign parts." That the above act was not intended to represent the policy of the province, but was considered necessary to secure fair trade with Massachusetts, is proved by the subsequent action of the legislature. On October 7 the following bill passed both houses:—

Forasmuch as the act of impost, etc., lately passed in this province is resented by the government of the Mass. as injurious to them, upon which they have enacted the imposing severe, uncommon and unneighborly dutys on provisions and other wares and merchandize that shall be imported and exported to and from y^t^ government and being given to understand that the execution of s^d^ act is suspended or does not commence until the 20th instant, in expectation of a reconsideration of our act of impost, etc., which they say has occasioned such a misunderstanding between s^d^ governments . . . for the redressing and removing of which voted: That the act of impost and excise of this Province be repealed so far as relates to impost on liquer and export on boards provided that the great and general assembly of the Massachusetts in their next session repeal their said act imposing said severe duties as also their former act laying double duties on merchandise imported from their province, powder money, double light money, etc., on the vessels of this province, more than is paid by the vessels belonging to any other of the neighboring government and that an order be issued out to the receiver or treasurer that they receive no more until further order from and after this date. But in case the s^d^ great and general assembly of the Mass. do not see meet to repeal their s^d^ Acts so far as affects and relates to this province then our act to remain in full force notwith-standing.[2]

Nor were the officers of the province wanting in action. On November 21 the general assembly was called and Lieutenant Governor Wentworth reported that

[1] XIX N. H. State papers, 160, 161.

[2] III N. H. Prov. papers, 827–8.

The principal reason of my further proroguing the Gen[l] Assembly to this day was to give the other government time before us to see whether they would repeal an act lately imposed on this government so cruel and oppressive. I am to let you know that since our last sitting Mr. Speaker Pierce and Mr. Treasurer Penhallow accompanyed me to Ipswich when I met Governor Shute according to appointment, and we discussed matters relating to the above act, etc., and came to this resolve, that in case the Mass. will drop all their impositions formerly and lately laid on this government that then and in such case we will do the same, viz., drop all dutys laid by us on them, or in such wise as they do by us. His excellency has promised his best endeavors shall not be wanting for the accommodation thereof. Now in case the Mass. does not redress us, then we have nothing more left us but to state the case fairly and to address his Majesty by our agent Mr. Newman. . . . When our act and that of Massachusetts comes before impartial judges ours will be thought no hardship but w[t] one government may lay on another, but theirs will look cruel and oppressive.[1]

On the thirtieth of the same month a committee was appointed from both houses "to form an address to his Excellency to represent to ye government of the Mass[a] our desire for the laying all duties aside in each which we suppose will be for the benefit of both provinces."[2] In the spring session, 1722, after several plans had been proposed by the house looking toward the repeal or suspension of the act, it was enacted by the assembly, May 3, 1722, "y[t] y[e] act of this province of the 15th of July, 1721, so far as it relates to the duties of exports and impost be supsended until the province of the Mass[a] put their act of export and import in force relating to this province."[3] From this date onward the legislative records upon this subject are silent. From the fact that the matter had occupied an important place in the minds of the legislators for a generation, and that contrary to the advice of the royal governor and notwithstanding the pressing necessity of securing a revenue, the house had

[1] III N. H. Prov. papers, 829–30.
[2] III N. H. Prov. papers, 835.
[3] III N. H. Prov. papers, 311–12.

for a decade generally declared for a free port, the conclusion appears very plausable that the act of 1721 was as effort to secure free trade with the colony of Massachusetts,[1] with which five-sevenths of the foreign commerce of New Hampshire was transacted.[2]

The impost tax was not again renewed during the provincial period. However, several attempts were made to secure revenue from certain persons and commodities imported, which may deserve a brief mention.

In 1732 the crown advised the colonies to lay an impost upon negroes and felons. In answer to the message of Governor Belcher, advising such action, the house said "that there never was any duties laid on either by the gov't and so few br'ot in that it would not be worth

[1] In justice to the province I must protest against both the conclusions reached by Mr. Douglass in his Financial history of Massachusetts, pages 85-87, and the grounds upon which he bases his statements. The preamble of the New Hampshire acts, if relied upon without reference to the action of Massachusetts, would justify the action of New Hampshire as completely as the preamble of the Massachusetts act of September 8, 1721, justifies the latter province. In the interest of historic truth, a careful consideration is asked of the action of both governments and of the facts upon which their actions were based.

[2] From a very interesting paper, made up of replies to queries by the Lords of Trade, January 22, 1730, made either by the secretary or the governor of the province, the following pertinent facts are gleaned: The trade of the province was lumber and fish; the trade was much the same as it had been for the ten years past; the province made use of all sorts of British manufactures, amounting to about five thousand pounds sterling per annum in value, which were obtained principally from Boston; the province sent lumber and fish to the Caribee Islands and received from it rum, sugar, molasses, and cotton; the province sent the same commodities to Spain and Portugal; the chief natural product of the province was lumber, generally manufactured and exported to Europe and to West India to the value of one thousand pounds sterling; the coasting sloops for Boston carried from the province thither in fish and lumber about five thousand pounds (sterling) per annum; there was no revenue but by poles and estates except £396 by excise and three or four barrels of gunpowder from the shippery. IV N. H. Prov. papers, 532.

the public notice so far as to make an act concerning them."[1] The act of the English government in 1733 forbidding that any duty on British shipping or manufacturers be laid by the provinces[2] would have limited narrowly the field of legislative action had the assembly desired to lay any burdens upon the trade of the other provinces. In 1756,[3] 1760,[4] and 1767[5] bills were passed by the house providing for an impost on liquors[6] imported into the province. The bills failed to receive the approval of the council and were not pressed by the representatives. They were occasioned by the extraordinary expenses of the French and Indian War of 1756–1763, and at this time represent the unusual rather than the usual methods of securing revenue.

The history of legislation relating to the impost and export duties may be roughly divided into three periods: (1) From 1680 until 1711, when the impost was an established feature of the provincial revenue continuing the system inherited from the parent colony, Massachusetts. (2) From 1711 to 1722, a period which must be regarded as one of unsettled policy, when the large commercial interests demanded and usually secured that freedom of movement so essential to commercial enterprise. (3) From 1722 to the Revolution, when freedom of trade represented the settled policy of the province, and the attempts to secure revenue from imported liquors were temporary in their nature, and may be regarded as

[1] IV N. H. Prov. papers, 617.
[2] IV N. H. Prov. papers, 631.
[3] VI N. H. Prov. papers, 473.
[4] VI N. H. Prov. papers, 733.
[5] VII N. H. Prov. papers, 129.
[6] In 1733 the English government passed an act to prevent the colonies from taxing English manufactured goods imported into America. Hence the field for legislative action after this date was necessarily limited. VII N. H. Prov. papers, 631. VIII *Idem*, 45.

expedients to which the province resorted to relieve some pressing temporary necessity.

SEC. 5. *Tonnage Dues.* By act of the assembly, April 1, 1680, the Massachusetts system of tonnage dues was continued "as formerly". The intention was to provide that all ships of above a certain burden entering the harbor should each trip pay one pound of gunpowder per ton or its equivalent in money.[1] In the Andros law ships above twelve tons were included; by the act of 1692, ships above thirty tons. In 1714[2] the same limit was fixed and seems to have been retained at least until the Revolution. The general law applied to all vessels "all or the major part of the owners whereof are not actually inhabitants" of the province. Exceptions to this law were made at certain periods. In 1693 an act renewing the tonnage dues provided that "sloops or boats that trade along ye shore to be free from paying of powder money that comes into this province for traffic from any port or harbor on this side Connetticutt." This exception in favor of coasters from "this side of Connetticutt" was annually renewed until 1698[3], and probably longer. In 1705, however, Samuel Penhallow, the treasurer, took oath "that since the year 1699 he hath received of all ships or vessels coming into the river the full duty of powder money or species, according to their tonnage and the acts of the province for

[1] The merchants, of course, took advantage of the changing values of money in its relation to powder. The Andros law, 1680, fixed the rate at 12*d.* per ton, or 1 pound of powder; the law of 1692, 18*d.*, or 1 pound of powder. On October 17, 1722, Lieutenant Governor Wentworth said in a message that owing to the difference in money, they then received only two-thirds of a pound.

[2] Acts and laws, 1726, p. 64.

[3] III N. H. Prov. papers, 208.

such duty, excepting only the mast ships, who have several times been abated by order of council, or excepting any other in the like nature."[1] From this statement it appears that the general exception in favor of Massachusetts may have been withdrawn as early as 1699, although the language of Treasurer Penhallow is susceptible of a different interpretation. In 1702 the act laying an impost of one pound of powder or its equivalent in money was made permanent. The provincial authorities seem to have regarded the act of 1717, by which the English government prohibited the colonies from laying any impost or powder money dues upon merchant ships of Great Britian trading in the colony, as binding upon them, and to have suspended the provincial act, for in 1720 the house appealed to the London agent to obtain the "royal bounty" that they might continue the act.[2] The Lords of Trade, upon application from said agent, reported,[3] February 13, 1722, that the act (1717) was not retroactive, and advised the province to continue to enforce the provincial act "as it [the act of Parliament, 1717] could have no reference to the act of 1702, and confirmed in 1706." In 1731 the provision of 1693, excepting coasters and Massachusetts vessels provided Massachusetts exempted "coasters and vessels belonging to New Hampshire", was reënacted. In view of the estrangement of the two colonies, due to the boundary line troubles which followed during the next decade, it is improbable that freedom from tonnage dues was long continued; improbable, indeed, that Massachusetts took even temporary advantage of the provision. From the powder money the province seems to have derived sufficient revenue to supply the fort with powder in ordinary times.

[1] III N. H. Prov. papers, 311–12.
[2] XIX N. H. State papers, 144.
[3] IV N. H. Prov. papers, 29.

In case of foreign wars the assembly was obliged to make direct appropriation for its supply.

SEC. 6. *Fines, Fees, and Lotteries.* An elaborate system of fines was a characteristic of the early, and to a less extent, of the later provincial government.[1] Such fines, while not imposed for the sake of revenue, must in the earlier days have added materially to the province's income. Their primary object was to prevent violations of the civil and criminal laws.[2] The marshal was required diligently and faithfully to collect and levy all such fines, "for which he shall have warr't" from the treasurer or other legal authority, to deliver the same to the treasurer or some one legally authorized to receive such fines, and to make return of all fines collected to the next quarter court of sessions in the province.[3] In 1721, on April 19, the house voted that in case the law obliging every town within the province consisting of one hundred families to provide a grammar school was not observed according to law "They [the towns] shall forfeit and pay ye sum of twenty pounds to be applied to defraying ye prov charges."[4] The same year, July 14, the same body voted to fine unlicensed houses five pounds.[5] In the same bill it was provided that "licensed houses should pay 10 shillings every time

[1] A list of fees established in 1682 may be found in I N. H. Province laws, 79. For list of 1686 see I N. H. Province laws, 107.

[2] Some of the characteristic offences for which the persons convicted might be fined, the fine to be handed over to the provincial treasurer, were (1680): drunkenness, 5 *s.* to £5.; swearing, 10 *s.* to 20 *s.*; profaining the Lord's day, 10 *s.*; contempt of God's or minister's word, 20 *s.* to 40 *s.*; lying (above ten years of age), 10 *s.*; burning fences, 40 *s.*; breaking down fences, gates, to be amerced according to nature of offence; defacing land marks, 20 *s.* to £5; unlawful gaming in public houses, by keeper, 40 *s.*; by each guest, 10 *s.*, etc., etc. Prov. Laws, I N. H. Prov. papers, 382–408.

[3] I N. H. Prov. papers, 400.

[4] XIX N. H. State papers, 150.

[5] XIX N. H. State papers, 162.

they should be found without beer or cyder for the refreshment of travelers." While the subject of fines does not properly form a constituent part of a history of taxation, the above typical instances may serve to indicate the extent to which they were imposed and the amount of relief that such revenue afforded to the usual forms of taxation.

Fees, or payments for services rendered by the government, were not less prominent than fines, and served to a very marked degree to relieve the ordinary taxation. Fees were regulated by a law as early as April 5, 1698.[1] The act was considerably extended and specific fees revised in 1718,[2] when the table as amended was printed with the session laws of that year. A report[3] furnished to the Lords of Trade, June 22, 1730, by either the governor or the secretary of the province, indicates very clearly the part played in the provincial revenue by the system of fines. This report gives as the ordinary expenses of the government "about fifteen hundred pounds per annum". Out of this sum were paid the governor, the councilors and representatives, the officers and soldiers at the fort, and, as the general assembly "sees meet", the treasurer and secretary. "The judges, justices, sheriffs, clerks, etc. and all other officers' fees are fixed by a law to be paid by the party and persons whom they serve; but they have nothing from the treasury." This system of fees extended to every department of governmental activity. Perhaps in no direction has there been greater advance in economical administration in the present century than in the substitution of fixed salaries for the system of fees and com-

[1] Prov. laws, III N. H. Prov. papers, 211.
[2] Acts and laws of the prov., 1726, pp. 82–87.
[3] IV N. H. Prov. papers, 532–3.

missions that burdened nearly every governmental act in the eighteenth century.

It is a fact worthy of note that the province of New Hampshire did not follow in the footsteps of Massachusetts by attempting to secure a part of the province revenue through the aid of lotteries, although the assembly authorized several lotteries for local purposes, which will be noticed in connection with the local revenue. The action of the house in 1760 indicates that the representatives of the people did not favor such a plan. A committee in devising a plan to raise eight hundred men for the Amherst expedition reported in favor of issuing £1500 sterling bills of credit with interest at 5 per cent to be called in by a tax in the years 1764-6.[1] In connection with the plan they advised a provincial lottery, the net profits of which should be applied toward paying the interest or a part of the principal of the sum proposed. This bill was amended in the house by providing "that there be no provincial lottery", and in its amended form it became a law. In 1769 the governor received instructions from the crown "not to give his consent to any act for the raising money by the institution of any public or private lottery without our consent."[2] In this case the province was obedient, and here again the influence of the crown was exerted in favor of a sound and healthy policy.

SEC. 7. *Loans.* From 1709[3] until the formation of the union in 1787 large use was made of bills of credit

[1] VI N. H. Prov. papers, 175.

[2] VII N. H. Prov. papers, 231.

[3] Hildreth, Vol. II, p. 259, states that the first New Hampshire bills of credit date from 1707, and were issued to aid in the expedition against Port Royal. Bullock, Monetary Hist. of the U. S., p. 207, on the other hand, places the first issues at 1709. The writer has been unable to find any traces of the issue of bills of credit earlier than 1709.

as a temporary substitute for taxation. In this, as in other lines of fiscal policy, Massachusetts appears to have set the example for her younger sister. From 1690 to 1714 Massachusetts had issued about £300,000 in bills of credit, and by allowing a bonus of 5 per cent when paid into the treasury for current dues she had succeeded in keeping them at par with coin for twenty years.[1] Therefore when extraordinary burdens fell upon the province of New Hampshire the colonial legislature, having the apparently successful outcome of the policy in Massachusetts as a guide, as naturally turned to the use of bills of credit as the modern legislature does to the issue of government bonds.

The bills of credit issued by the province were of two distinct kinds: (1) those issued to pay the running expenses and redeemable by a tax in a subsequent year or years, and (2) those loaned upon security and bearing a stipulated rate of interest. The latter form of loan, issued in considerable quantities, was the expedient generally resorted to in the case of a great war, and to a certain extent was the direct predecessor of the modern war debt. The former from the date of its origin was used with very great regularity and persistence to pay the every day expenses of the government.

Without entering upon a detailed description of the various issues of bills of credit it may prove of interest here to consider briefly: (1) the causes and conditions leading to the adoption of this policy; (2) the extent to which bills of credit were used as a substitute for taxes with the influences determining the same; and (3) the economic effect of this policy upon the colony and its citizens.

1. Two causes or conditions which were largely

[1] Felt, Massachusetts currency, p. 52.

responsible stand out with very great prominence: (1) the poverty of the taxpayers and their consequent inability to meet extraordinary burdens in any one year; (2) the extreme scarcity of a common medium of exchange. It was again and again asserted that a higher tax rate would "tend to fill the gaols rather than the treasury." The geographical construction of the province, a triangle with the settlements concentrated at one vertex and the long side opposite to be protected from the attacks of the Indian foes, needs to be considered in this connection. In many cases the bills of credit were issued to equip an expedition against the Indians, or to hold a line of temporary fortifications in time of threatened attack. To this poverty, coupled with the large relative expense of defence, there must be added as a contributing cause the constant dearth of a convenient medium of exchange. The earlier issues of interest bearing bills of credit were largely, if not wholly, due to such scarcity. This same condition prevented the payment and cancellation of such issues until long after the legal date set for their retirement in the original act authorizing the issues.

2. The extent to which bills of credit were employed as a temporary substitute for taxation may be seen from the following table:—

	Bills of credit issued.		*Silver shillings per ounce.*	
Years.	*Non-interest bearing.*	*Interest bearing.*		*Remarks.*
1709–1716	£ 9,200 old tenor	£ 1,500 old tnr.	8–9	Indian War
1717	----------	15,000 old tnr.	10	
1722–1727	12,800 old tenor	----------	13–16	Indian War
1730–1740	9,800 old tenor	----------	20–29	
1742–1743	6,000 new tenor	25,000 new tnr.	32	
1745–1746	87,000 new tenor	----------	35–50	Louisburg Expedition
1755–1758	116,250 second new tenor	----------	100–120	Seven Years' War
1759–1762	68,000 sterling bills	----------	120–140	Seven Years' War

It will be noticed that the bills of credit were issued chiefly during the time of war. In the case of the earlier issues taxes to redeem the bills were laid within the next five succeeding years. In the later issues the period was longer. The issues of 1745 were payable in taxes laid during the years 1751–1766. The issues of 1755–1757 were payable during the years 1759–1762. The later issues, for 1745–1762, were largely paid out of the funds advanced by the English parliament on account of the Seven Years' War. This fund, being paid in English money, was sufficient to take up a large amount of paper money of the colony. In this case the bills of credit served as a loan to the English government during the war to be repaid after its close. Indeed, in some cases no taxes were provided for the redemption of the bills, it being assumed they were to be paid out of the funds to be paid by England.

3. So far as the expenses for which the bills were issued were not repaid by the English government they served to distribute the burden of taxation, which otherwise must have been intolerable in time of war, over a period of years, thus taking the place of a modern war loan. Here the bills of credit served a wise economic end, and one which could not under the general conditions have been as well met in any other way. The chief evil connected with their use was found in the depreciation which inevitably occurs whenever a government arbitrarily by act of legislation, either directly or indirectly, inflates the amount of currency in actual circulation. The depreciation in this case is best disclosed in the value of silver as shown in the above table.

The use of bills of credit marks a stage in the financial history of the province intermediate between barter

and money exchange. The modern system of government loans, both temporary and permanent, was in its infancy. In case of war the demand for immediate revenue was urgent and pressing, the people had little ready money, and consequently were unable to advance a large sum in any single year. The system of loans effected through the use of bills of credit, when not abused, played a justifiable part in the early history of taxation in the colony. When abused it caused great injustice and suffering. In no respect did the English government exert its powers over the finances of the province more wisely than in preventing excessive issues of bills of credit and long delays in their redemption with the consequence depreciation of the provincial paper money. The real temper of the representatives on this subject, a temper often veiled by dangers to which the frontier province was almost constantly exposed, is nowhere better expressed than in an address to the king at the opening of the Seven Years' War, July 26, 1753.

> Your Majesties subjects in this province are not desirous of large emissions of paper bills, nor of extending them to farther periods than the situation & condition of the province absolutely require and far from desiring to postpone the payment of any paper bills now out, but willing to sink all at the periods fixed in the several acts emitting the same . . . so that all our paper bills now extant shall be bro't in by the time fixed in the several acts for emitting the same.[1]

[1] Address to the king, VI N. H. Prov. papers, 223–6.

CHAPTER IV.

THE ADMINISTRATION OF THE PROVINCIAL TAXES, 1680–1775.

SEC. 1. *Apportionment.* From the establishment of the provincial government, in 1680, until 1693 the new government followed the Massachusetts system of assessing a rate of one or more pennies in the pound directly upon individuals. In the latter year the legislature, when authorizing the tax, fixed the proportion that each town was to pay—a system that was followed for nearly two centuries. For some years it would seem from the legislative records that the apportionment was made upon the basis of the previous year's levy, taking into account the growth of the towns from year to year.[1] In general a new proportion seems to have been established whenever the growth of the towns demanded it, or when the settlement of new districts made it desirable to include such in the annual levy. The difficulties in the way of a legislature's making an equitable apportionment must have early forced itself upon the legislature, for on May 29, 1724, the house voted "that each town and precinct within the province shall . . . choose some proper person to meet . . . and agree upon rules and measures for the new proportioning the province taxes . . . the best they can and make returns to the assembly."[2] An Indian war delayed further action for some years. In 1729 the selectmen were directed to take an invoice "of the poles and rateable estate[3] in

[1] Belknap, Hist. of N. H., 306.
[2] IV N. H. Prov. papers, 381.
[3] IV N. H. Prov. papers, 530.

order that a new proportion may be established." In a similar order in 1732 the legislature required "the person's names with rateable estate carryed off ag^{t} their names." At the beginning of Governor Benning Wentworth's administration, owing to the settlement of the boundary line controversy, a considerable district which had either been subject to Massachusetts or in the disputed territory was added to New Hampshire. A bill for taxing the new district became a law March 18, 1742. The act provided that town governments should be established over the territory added, and that the clerk should "take a true and perfect list and inventory of all rateable polls and estates."[1] Both the clerk and the taxable inhabitants were to be under oath. The returns were to be made to the general assembly. From the inventories thus taken the new towns were apportioned in the province tax for that year. This was substantially the method followed for the apportionment of the province tax to the middle of the nineteenth century. After 1742 a new proportion was made usually as often as once in three years, sometimes annually. After 1772[2] the proportion was regularly published with the sessions laws and legally authorized to be followed "until a new proportion be made."

SEC. 2. *Equalization.* The laws of 1680 provided for a committee of six—one each from the four towns chosen by the assembly together with two of the council—to compare the lists returned by the selectmen and to "bring s^{d} estates to an equal valuation, having respect to the places where they lye y^{t} no towne or pson be burthened beyond proportion."[3] After this date no at-

[1] IV N. H. Prov. papers, 616

[2] VII N. H. Prov. papers, 326–329.

[3] Laws, 1680, I N. H. Prov. papers, 397–8.

tempt at equalization was made except through the general laws relating to taxes.[1] Whether this indicates a state of satisfaction regarding the system as administered, or a lack of capacity to grapple with a difficult problem, is an open question. Perhaps the most probable solution is that the legislature in keeping the apportionment so directly in their own hands failed to see that their methods could be improved.

SEC. 3. *Assessment.* Previous to the reëstablishment of the province in 1692 the assessment was made by act of the legislature acting directly upon the local officers, requiring them forthwith to make the rates and to commit them to the constable for collection.[2] In 1692 the provincial treasurer was authorized to issue his warrants to the selectmen, directing them to make the assessment according to the law then established and to commit the same to the constable as before.[3] This method was continued with little change until after the Revolution. Nearly every act relating to assessment during the provincial period recognized a body of men, usually three, called assessors, to act with the selectmen in making the assessment. A study of local institutions indicates that such office was nominal. The records of the town of Concord show that the custom was, from the organization of the town, to elect the selectmen for the time being as assessors; while there was doubtless a diversity of local custom, the above practice was certainly very prevalent. In 1754 the law relating to assessments was amended by making it the duty of the

[1] The commissioners for the several towns in 1689 were required to meet and "perfect the said lists" for each shire before sending the same to the state treasurer.

[2] Prov. laws, 1680, I N. H. Prov. papers, 399; Cranfield's laws, I N. H. Prov. papers, 448.

[3] Prov. laws, 1692, III N. H. Prov. papers, 164–6.

provincial treasurer to send out his warrant annually sometime in the month of May. A second clause of the same law provided that in case the selectmen neglected their duty in making the assessment and in returning the tax within the time prescribed "their persons and estates shall be liable and are hereby subjected to be taken in execution for the sum they were respectively directed to assess and cause to be paid as aforesaid," the warrant to issue from the provincial treasurer and to be executed as in case of delinquent constables. In all cases they were allowed twenty days of grace after the prescribed date before the issuance of the execution.[1] A further safeguard was provided by authorizing the selectmen of a subsequent year to issue executions against delinquent constables when the selectmen of the preceding year had failed for any reason to do so. It thus appears that while the assessment of the province tax was made by the local officers upon the tax payers, they were acting under laws so definite and exacting that any failure to do their duty could not fail to bring the assessment upon their own estates. In order that such remedy might not fail for want of such estate, both law and custom required that only men whose property was sufficient to meet all such demands should be appointed or elected to any responsible office. Whenever any failure to receive the full amount of the provincial tax occurred it was due rather to lax enforcement of the laws, aggravated or made necessary by the economic conditions of the province, than to defects in the law itself.

SEC. 4. *Collection.* The laws relating to the collection of taxes gives a very clear picture of the difficulties experienced in that work. From the establish-

[1] Laws, 1761, 193–4.

ment of the province, 1680, until 1758 the constable was recognized in the laws [1] as the collector of the provincial as well as of the local taxes. Although the custom of employing collectors seems to have been gradually increasing it was not until this latter year, 1758, that this method was legally sanctioned. The preamble gave as the reason that it was "thought by many persons that chosing or agreeing with certain persons to collect the public taxes within the several towns and parishes in this province would be a more expeditious as well as a more convenient method of collecting the same." [2] Accordingly the towns were authorized by act of the legislature (1758) to "chose any number of such persons as they see cause, to collect the public rates, taxes or assessments made annually within the same or may direct and authorize the selectmen of such town or parish, to chose and agree with such persons to be collectors of the . . . taxes . . . aforesaid." This change was the result of experience. It was found that the work could be done more economically when the office of collector was

[1] The office of collector as substitute for a part of the work of the constable is another instance of the English method of making legislation follow rather than precede custom. The origin of the custom of placing the list of taxes in the hands of a collector with a definite agreement to collect the same rather than that of attaching the duties to the office of constable is yet a matter for the investigator to solve. However the office originated, it is clear that collectors were employed before they were authorized by the act of 1758. In 1754, appended to an act to enforce the assessing and collecting of rates and taxes, the following clause appears: "And when any person shall be chosen and appointed to collect rates and taxes by the name of a collector instead of a constable, he shall be thereby invested with the same power and authority in that regard which a constable has, and such collector is hereby subjected to the same kind of process, and to be proceeded against in the same manner in case of neglect of duty therein as constables are."

[2] Laws, 1761, 201. A statement in regard to the revenue for New England under Andros shows that the cost of collection at that time was approximately 17 per cent. I N. H. Prov. laws, p. 176.

divorced from that of constable. The two offices demanded a different form of ability, and in accordance with the principle of the division of labor the method more "expedient as well as convenient" prevailed.

The disagreeable duties of the office caused frequent refusals to serve as constable, and consequently heavy fines for such refusal. It was enacted in 1692 that "if the p'son chosen [constable] shall refuse to serve he shall paye a fine y^e^ sum of five pounds, one half to ye use of ye town, and ye free-holders shall make choice of another."[1] This provision was supplemented in 1698 by a clause authorizing the constable on warrant from a justice of the peace in case the person elected refused to take the oath of office "to app'hend the body of such person or persons and convey him to his Maj^ties^ prison in the Province there to be secured, untill he pay the s'd fine of five pounds and all necessary charges about the same."[2] By a statute of 1719 it was "provided that no person in commission of any office, civil or military, church office, or member of the house of representatives, for the time being nor any other who hath served as constable within the space of sixty years, shall be chosen to the office of constable."[3] The fine for refusing to serve was continued as in 1692 and 1698, with a provision for a hearing before the session as to whether the person so refusing had just cause for his action. In case he could show no just cause the fine was to be collected by distraint on warrant from the justice to the sheriff or "to any legally constituted constable then in being in such town."

The province held the constable directly responsible,

[1] Laws, 1692, III N. H. Prov. papers, 167.
[2] III N. H. Prov. papers, 207.
[3] Laws, 1726, 135.

in the earlier years of its existence, for the amount committed to him for collection. With this in view one of the first provincial levies provided "y^{t} if any constable shall faile to clear up his rates within his years, he shall be lyable to have his estate distrained by warrant from ye treas directed to ye marshall or marshalls within this province."[1] Nor did the laws fail to give him whatever aid they were able to, for a subsequent clause added "y^{t} if any pson or psons wthin this province ratable shall refuse to pay his rate or rates for any estate to the constable, y^{t} the constable shall have power to seize his person and carry him to the next prison there to remain till he pay his s^{d} rates, or give good security soe to doe."[2] The above provisions were verbally reënacted in the body of laws made by the first assembly called by Governor Cranfield in 1682.[3] In 1693 the law was amended by providing that in case the constables did not collect and pay in the rates legally committed to them "that their warrant for distraining upon estates according to former act shall alsoe be to apprehend and imprison their person when noe estate appears, until they find estate to answer the law." The clause relating to persons taxed where no estate appeared authorized the constable "by warrant from a justice of the peace to apprehend and imprison such persons until said rates and all necessary charges thereabout be paid." An additional clause indicates that the practice of moving to avoid taxation was then not unknown, for in such cases the sheriff was authorized to levy the rate on the estate "or for want thereof on the person so removing, wherever he is to be found within this province."[4]

[1] Laws, 1680, I N. H. Prov. papers, 396.
[2] Laws, 1680, I N. H. Prov. papers, 400.
[3] Laws, 1682, I N. H. Prov. papers, 447.
[4] III N. H. Prov. papers, 187–8.

This order failed in one point, viz., no definite date for settlement was fixed. Hence the assembly corrected this omission during the year by allowing the constable three months to "a' just the accounts" with the proper officers before the warrants for distraint should be issued.

The early laws relating to constables and their duties in collecting rates and assessments were codified by the important act of 1719.[1] This law with but slight modifications continued in force during the provincial period.[2] The act provided that all taxes must be paid in to the officer authorized to receive the same within one month after the expiration of the time allowed for gathering the rate. In case this was not complied with distress was to be made on the constable's real or personal estate "returning the over plus if any." In case no estate was found then such constable was to be imprisoned as usual. In case the constable took goods by distress for taxes he must hold the same at the owner's cost four days and give twenty-four hours' notice in some public place of the sale. In case the person moved out of the town where assessed the constable was given the same power of distraint and imprisonment as he possessed in his own town. A new clause indicates that all property holdings were becoming delocalized, *i.e.*, the citizens of the province often owned land in several townships. In case the owner or tenant of any lands taxable was not a resident of the same town, and no stock, corn, or hay was to be found upon the premises whereon to make distress, any justice of the peace of the province was authorized upon application by the constable to grant a warrant to the constable of the precinct where the occupant resided "to distrain such

[1] Laws, 1726, 15.
[2] Laws, 1759, 36.

occupant by his goods and chattels the full sums at which such lands are set in such list of assessment, with the charge of making such distress and to satisfy the same by sale thereof . . . and in case no goods or chattles of the party can be found, whereon to distrain then to commit him to the Common Gaol there to remain without Bail or Main prize until he pay and satisfy the sums or sum so assessed with the charges." Whenever new constables were chosen and sworn before the former constable had completed the collection the latter were to have full power, notwithstanding, to finish the collection. A further provision related to the sale of the real property of a constable when he did not pay in his rates according to law. Such property first had to be appraised by two to three freeholders of the town under oath. Then the sheriff, or his deputy, was authorized to make sale of the lands or houses and to execute a good and sufficient deed for the same, such deed to be good and sufficient in the law. A very important saving clause was appended to this important act: "Provided that notwithstanding that in no case whatever any distress shall be made or take from any person or persons of his or their beasts belonging to the plough, nor of tools or implements necessary for his or their trade and occupation nor of his or their arms or utensils of household necessary for upholding life, nor of bedding or apparrel necessary for him or themselves or family, any law usage or custom to the contrary notwithstanding." An addition of considerable importance was made in 1754 by requiring the selectmen to send to the provincial treasurer "the name or names of the constable or constables within their respective limits, who shall have any part of the province tax to collect, the sum each is to collect, the date of the warrant given him for that

purpose and the time he was ordered to pay the same into the treasury as aforesaid."[1] The law of 1758, authorizing the appointment of collectors, merely clothed the collector with the powers and duties of the constable appertaining to that office as a collector of public taxes.[2]

Notwithstanding the severe penalties prescribed for delinquent constables and collectors, the fact is patent that at all times and in all places in the province there was a most embarrassing and expensive delay in "getting in the rates". The act of 1754, already referred to, asserted that "the neglect or delay of seasonable making and collecting the taxes imposed by law in this province and to be annually paid is very prejudicial to the public affairs."[3] By the treasurer's report, 1760, it appears that on August £4703 was outstanding, representing back taxes for several years. In 1762 a long list of signers petitioned against a play-house at Portsmouth lest it should "carry off the little remaining silver and gold there is now in town and when people make such difficulties in paying the common and ordinary taxes and charges of government that the taxes are seldom collected within the year, through the pretence of poverty, . . . we apprehend it would be destructive to the circumstances of the people as well as their morals."[4] In 1763 the town of New Castle asked the legislature for further time in paying "some back arrearages of taxes, as they were under some difficulties in collecting the same by the constables dying."[5] After investigation the house refused to

[1] Laws, 1761, 194.

[2] Laws, 1761, 201.

[3] Laws, 1761, 193.

[4] VI N. H. Prov. papers, 833–4. Signed by the five selectmen and one hundred and eighty others.

[5] VI N. H. Prov. papers, 877.

allow further delay, "it appearing that some of the s[d] taxes had been due nine or ten years."

The chief obstacle to the collection of the taxes was the lack of a stable and convenient currency and the consequent usage of payment in kind, or as the legislature phrased it, in "specie agreeable to the prices fixed and set." A more inconvenient and wasteful method could hardly have been devised, and yet it is difficult to see how it could have been improved with the system of currency then in use. In the first place, the practice of collecting beans of one farmer, beef or pork of another, and tanned shoe leather, codfish, turpentine, or white pine boards of those whose business rendered it convenient for them to pay in such articles was not only expensive, but demanded business qualities not likely to be found in one whose chief duties were those of a police officer. Again, the cost of transportation of such articles as bar iron and lumber, and the loss likely to ensue upon the gathering of such perishable articles as corn, wheat, or pork constituted a direct tax upon the province. Finally, the practice of forcing such a quantity of goods and produce upon the market at times when there was likely to be little demand not only caused an economic loss to the province because the government officials could not accommodate the time of sale to the time of greatest demand, but moreover could have no other effect than needlessly to depress prices throughout the province. This system, which violated every canon of an equitable system of taxation, was aggravated by the constant fluctuations of a most vicious currency.

CHAPTER V.

THE INVENTORY OF POLLS AND OF RATABLE ESTATE, 1775—1900.

SEC. 1. *Introduction.* The chief characteristics of the period already considered, that from the establishment of the colony to the Revolution, was the construction of a complete system of taxation, built upon the theory of taxing every person in proportion to his income. This system was inherited from England and was enforced in the province of New Hampshire both by the Massachusetts government from 1642 to 1679 and by the royal government inaugurated in 1680 from that date until its downfall in 1775. The independence secured through the successful outcome of the Revolutionary War was economic no less than political. With economic independence came the development of the natural resources of the province, the establishment of manufactures, the extension of commerce, the more rapid accumulation of wealth in its varied forms, and with these economic changes, consequent changes in the theory and practice of taxation. That these changes were not effected until long after their crying need had been painfully demonstrated is undoubtedly true; such conservatism in a matter of the first importance to the permanent welfare of the people is a reason for congratulation rather than the reverse. It testifies not only to the stability with which the foundations were laid during the provincial period, but what is perhaps of more consequence, to the conservative character of the people in the state at the present time.

During the century and a quarter that have elapsed

since the Revolution the important changes inaugurated may be grouped under three heads: (1) From 1775 to 1789 the system inherited from the colonial government was maintained intact. The avowed object was to tax "every person in proportion to his income" and the bases were polls, ratable estate, and faculty.[1] The first significant change occurred in 1789, when the income theory, after having been the ruling idea in New Hampshire taxation from the beginning of the colony, was permanently abandoned, and the taxation of "every person in proportion to his estate" was substituted. As a natural consequence the taxation of a person's "faculty" was no longer attempted. The transition from the income to the property theory had, however, been very gradual. In fact before the outbreak of the Revolution the system had become essentially a general property tax plus a comparatively large poll tax. The act of 1789 registered this fact in the law. (2) The second important change was finally effected in 1833, when the method of fixing the values of large classes of property by the legislature[2] for a term of years was abandoned and all taxable property was thenceforth to be appraised at its true value in money by local officers. (3) A third important change was inaugurated in 1842 by the act making railroad corporations taxable by the state, the tax collected being divided between the towns and the state. This was followed by a series of acts of like nature, culminating in 1879, making the more important corporations directly taxable to the state, the tax in certain cases being partially distributed to the towns, in other cases wholly retained by the state.

[1] Acts, 1776, 1789, 1784, and preceding acts of provincial period.

[2] Vermont took the same step in 1841. See Wood, Hist. of taxation in Vermont.

SEC. 2. *The Inventory of Polls and of Ratable Estate, 1776–1789.* The changes in the inventory introduced during this period were intended simply to secure an increased revenue.[1] These changes were of two kinds: (1) those increasing the valuation of property already listed, and (2) those increasing the list of ratable property. An act of 1776[2] increased the valuation of improved real estate an average of about 50 per cent, the list otherwise remaining unchanged.[3] A more noteworthy change consisted in a series of acts beginning in 1777[4] making unimproved buildings and lands, whether owned by residents or non-residents, taxable at a uniform rate with money, viz., one-half of one per cent of the real value.

SEC. 3. *The Inventory of Polls and of Ratable Estate, 1789–1833.* The important change in the theory and practice of taxation adopted into a legal system by the act of 1789 has already been noted. From this date onward the avowed object in the framing of the laws of taxation was "that every person may be compelled to pay in proportion to his or her estate."[5] Accordingly no further attempt was made to tax a person's "faculty" and more attention was given to the valuation of the property included in the inventory and to the taxation of new forms of real and personal property. Two results of this change in the revenue system stand out with some prominence: (1) Less attention was paid to the poll tax. The rating was again reduced in 1794, this time to eight shillings, and during the next decade several classes were legally exempted from its opera-

[1] Owing to the financial burdens of the Revolutionary War.
[2] Laws, 1815, appendix, 511.
[3] The valuation of the poll was reduced to 10 *s.* in 1780.
[4] Laws, 1815, appendix, 513.
[5] Laws, 1789, 212.

tion.[1] (2) On the other hand, new forms of property were gradually discovered and added to the list. The forms thus included were public securities in 1792, carriages and bank stock in 1803, jacks, mules, and carding machines in 1809, and fire insurance companies in 1830.

Changes in the valuation of real estate were especially marked. In 1803 the valuation of land was advanced, especially when compared with live stock, one of the chief items in the inventory. Again, in 1830, a general reduction of nearly twenty-five per cent was made in the valuation of all classes of property that were arbitrarily rated by legislative act. In a few cases, however, the valuation was increased. Such a general readjustment of the list indicates clearly that values were undergoing radical changes and that the old method of rating large classes of property by the legislature for a term of years had become, under the influence of a new industrial era, unsuited to these conditions. A fixed list was extremely convenient while values remained relatively stable, and proved equitable, and hence satisfactory, in its workings. When values began to change rapidly and new forms of property were appearing, the market price was nearer the just price than any that could be fixed some months in advance by the state legislature. It is strictly in accordance with the working of natural laws that the rating system was abandoned in 1833 and a less arbitrary method substituted providing that all taxable property should be appraised at its true value in money by the local assessors.

[1] In 1798 persons enrolled in the militia, from 18 to 21 years of age; ministers in active service; students in colleges; paupers and idiots; in 1803, the president, professors, and tutors in colleges.

SEC. 4. *The Act of 1833 and its Amendments.* The act of 1833 made comparatively little change in the objects of taxation but a very important one in the method of their valuation. Previous to this date the state legislature established periodically the valuation at which the more important classes of articles should be placed in the list. After this date the work of appraisal was intrusted wholly [1] to local officers.[2] The first section of the act provided that all ratable estate, both real and personal, should be appraised at its full and true value in money; the second section enumerated in full the classes of property that were to be included in the inventory.[3]

This act is therefore worthy of notice, since it was distinctly a decentralizing one, transferring the power of appraising the taxable property from the hands of the state legislature to those of local boards of assessors. It marked, therefore, the flood tide of democracy in the history of taxatiou in the state. From this date onward the tendency was constantly toward centralization, a movement made necessary by the disintegrating forces set at work in 1833. This tendency to centralization was especially strengthened by two measures: (1) the taxation of railroad corporations in 1842 by the central authorities and the distribution of taxes between the town and the state; (2) the establishment of a board of equalization in 1878, to equalize the valuation placed upon the property by the various local boards of assessors.

SEC. 5. *The Act of 1842 and its Amendments.* The

[1] With one exception: stallions kept for service were placed in the list at $10 each until 1837.

[2] The selectmen or boards of assessors in the several towns.

[3] One new class only was added, viz.: locks, canals, and toll bridges. Churches, schoolhouses, and public property, previously exempted by custom, were made so by law.

act of 1842, like that of 1833, introduced a change in the method of taxation of far reaching importance. It excluded railroad stocks from the general inventory of personal estates, and provided for the taxation of railroad corporations as a whole by the central officers of the state. It therefore not only checked the disintegrating tendency of the act of 1833, but also established a method for the taxation of corporations[1] that has since been followed until the corporation taxes form an important part of the state revenue. This early recognition of the fact that local assessors, each working in a limited area, are entirely incapable of reaching the property of corporations and accurately valuing their entire property from the valuation of its separate parts has been of vast importance to the state. Still other provisions regarding the taxation of corporations indicates that the officials were at this early date experiencing difficulty in dealing with these illusive forms of property. Both the corporations and certain of the officers were, under penalties, required to furnish a full and detailed list of the stocks and property subject to taxation.

From the earliest times the deposits of individuals in savings banks were included in the inventory and taxed directly to the depositors. It was not till 1864 that the corporate method similar to that employed in the taxation of railroad property was adopted for savings bank deposits. By an act of that year the taxation of such property was entrusted to state officers, and consequently the deposits of individuals excluded from the invoice.[2]

[1] In 1821 an attempt was made to tax banks by placing a tax on their circulation. This method was abandoned after one year's trial.

[2] From 1833 to 1878 no other changes were introduced that affected the general scheme of taxation. Some classes of property were added to the inventory, some exemptions made. The rating of the poll was changed in 1833, 1851, and 1871.

SEC. 6. *The Act of 1878.* As early as 1864 a resolution was adopted by the state legislature calling for a committee to revise the laws relating to taxation and to report to the legislature at its next session.[1] It does not appear, however, that any action was taken, or that the committee was even appointed. The agitation for tax reform was renewed in the early seventies, and as a result a commission[2] was appointed in 1874 "to revise, codify and amend the laws relating to taxation and exemptions therefrom and to recommend such alterations as they find necessary to establish an equal system of taxation."[3] The commission at once prepared and distributed a circular letter "to the assessors and collectors of taxes in every town and to others familiar with the operation of our tax laws and interested in the subject, soliciting information as to the defects of our present system and suggestions as to the proper remedies to be applied." The report stated that as a result "many communications have been received in reply to the circular. Some of them furnish striking information as to the inefficiency of our tax laws, showing that they fail to accomplish the important purposes of a well adjusted system of taxation, inasmuch as they fail to operate upon the taxation with that equality and uniformity without which they must necessarily work mischief to the public and injustice to the individuals and showing also that no amendment to the laws can make the system such in these respects as the highest interests of the state require without an entire change in our policy in some of its distinguishing features." The report further stated that "with a few exceptions (those recom-

[1] Laws, 1864, 2856.

[2] Composed of George Y. Sawyer, chairman, Jonas Livingstone, Hiram R. Roberts. The report was the work of Sawyer.

[3] Report of tax commission of 1875.

mending the system proposed by the New York commission of 1871, David A. Wells, chairman), all communications to the commissioners in response to the circular contemplate a continuance of the general policy of the state on the subject of taxation that has prevailed from the earliest period of our provincial history. Most of the amendments of the laws which are suggested are aimed at rendering the system more efficacious in reaching taxable property that now evades taxation, and to bring within the range of assessment other classes of property not now subject to tax; and these objects it is proposed to effect by providing for stringent oaths and severe pains and penalties for tax payers; and for more despotic inquisitional powers over household and private affairs in the hands of government officials."[1]

After a full investigation the commission recognized the undoubted fact that such measures as were found advisable and necessary "to establish an equal system of taxation" would not prove acceptable to public sentiment as voiced by the legislatures of the period; therefore it contented itself with publishing the results of the investigation and in recommending in a general way that taxes be confined to visible, tangible property, that church property be taxed, and that manufacturing establishments be exempted. Notwithstanding repeated failures to secure results, the demand for tax reform was made again and this time with better success. On the 14th of July, 1877, a tax commission was authorized by the legislature to consist of "four commissioners . . . two from each of the politicial parties . . . together with the state treasurer . . whose duty it shall be to carefully examine into the sources from which the state derives its revenue and ascertain and re-

[1] Report of tax commission of 1875, p. 7.

port whether or not all classes of property are equally taxed under the present laws; also to recommend to the next legislature, if possible, some plan of legislation by which the town and city may be relieved to some extent from what is known as the state tax and also to seek new sources of revenue."[1]

The commissioners[2] received their authority on the 14th of November, 1877, and on the 28th organized with Solon A. Carter, the state treasurer, as chairman, and William H. Cummings as secretary. Public hearings of which full notice had been previously given were held, a stenographer employed, and a considerable amount of information collected, both in regard to the sources of the state's revenue under the existing laws, and as to the probable effect of the taxation proposed by the commission. The commission drew up as the fruit of their labors a series of entirely new bills relating to taxation, which the legislature of 1878 adopted in their main features. The laws thus revised were incorporated into the revised laws of that year and have since remained with little alteration the basis of the present system of taxation. The distinguishing feature of the revision of 1878, aside from the special taxes upon the corporations,[3] is the minuteness of provisions relating to the invoice of taxable property, and the severity of the penalties for evasion or fraud.

The secretary of state was required to furnish annually on or before March 1st, to the proper officials, blank inventories requiring "under oath and in answer to interrogatories therein set down, full information to be given therein by the persons or corporations to be taxed,

[1] Laws, 1877, chap. 98.

[2] Solon A. Carter, state treasurer, W. H. Cummings, N. G. Ordway, O. C. Moore, W. H. H. Mason.

[3] See chapter VI.

of the classes in gross and the amount thereof of each class of his property and estate and the value of such classes, of his perfonal property and estate liable to taxation and such further information as will enable selectmen or assessors to assess such property and estate at its true value."[1] In case the inventory was filled satisfactorily and returned to the proper officers before April 15th the tax was to be assessed according to its statements; in case of wilful omission "to make, deliver and return such inventory, or to answer any interrogatory therein," or of false statements or dissatisfaction with the returns, the selectmen were authorized to "ascertain otherwise as nearly as may be the amount and value of the property and estate for which, in their opinion he is liable to be taxed, and shall set down to such person or corporation by way of doomage four times as much as such estate if so inventoried and returned would be legally taxable." Corporations were thus placed under regulations identical with those imposed on individuals. As an additional safeguard the principal officer of every bank or corporation was required to furnish to the proper officer an account of all shares or deposits, the value thereof, and whether such shares were mortgaged or pledged. The penalty for failure to fulfill this duty was a fine of $400 to be recovered and used for the town. The iron clad oath[3] required of every taxpayer affirmed in substance that "according to the best of his knowledge and belief, said inventory contains true statement of all his or their property liable to taxation and that he or they have not conveyed or disposed of any property or estate in any manner for the purpose of evading the

[1] General laws, 1878, 144.
[2] General laws, 1878, 145.
[3] General laws, 1878, 146.

provisions of this chapter." The penalty for false swearing was made a criminal offence by section 9: "if any person shall swear falsely in violation of the provision of this chapter, he shall be deemed guilty of perjury and punished accordingly." [1]

The legislation of 1878 relating to taxation is especially worthy of notice in three points :—

1. It introduced several new taxes upon corporations directly assessable by the state officers.[2]

2. There was very little change made in the general inventory of taxable property.[3] The commissioners of 1878 stated that "the state system of taxation universally in vogue is a property tax. . . This tax is supposed to be equally imposed. . . As a general basis of state, county, and municipal taxation, nearly all are agreed upon this system and it would be difficult to construct a better one. All [improvements

[1] General laws, 1878, 146.

[2] See chapter VI, sec. 2.

[3] It made certain specific exemptions, viz. : almshouse on county farms, property of the United States for light-houses and public buildings, reclaimed swamp lands (for agricultural uses) for a period of ten years. The amendments to the act of 1878 were as follows : 1879, explaining certain obscure passages, providing that taxpayers need not estimate the value of property returned, classing for purposes of taxation sea-going vessels as stock in trade, making church property in excess of $10,000 to one society taxable ; 1881, exempting ships and vessels engaged in foreign carrying trade for ten months before the annual assessment, or built during the year, from taxation as stock in trade, but making the net yearly income taxable as personal estate ; 1883, allowing towns to authorize selectmen to distribute blank inventories when they appraised property ; 1885, taxing mica mines as real estate until they declared dividends ; 1889, making fowls kept by one person in excess of $50 worth taxable ; 1895, making "all United States, state, county, city or town stocks and bonds, and all other interest-bearing bonds not exempt from taxation by law" taxable as "stocks in the public funds" ; 1895, exempting live stock, horses, asses, mules, oxen, cows, and other neat stock from taxation under three years, sheep and hogs under one year ; 1897, repealing amendment of 1895 relating to horses, cattle, etc.

suggested] are a departure from the first principle of taxation laid down by the pioneer of English political economists[1] and generally reasserted by his followers." The commissioners believed with M. Say that "the best tax is always the lightest," and adopted as a corollary the proposition that the "lightest tax must be the one that is the most widely and equally diffused." The commissioners of 1876 on the other hand pertinently asked the tax payers to consider this case: "Suppose 30, 40, or 50 per cent. of the property of a certain class, taxable under a system which professes to be an equal and just system because it requires all property to be uniformly taxed, escapes and evades taxation, and that the experience for a long period of time of every state in which such a system has prevailed shows that it will continue to escape; where is the equality or justice of the system which taxes 50, 60, or 70 per cent. of the property of the class and leaves or is compelled to leave the balance untaxed?"[2] The commission of 1876 further affirmed that in their opinion if the taxation of any classes of property drives such property from the state or necessitates inquisitional or despotic laws, such taxation is at least questionable. The criterion should be, they said, "Sound principles of political economy and not the application of the dogma, that to tax equally is to tax substantially the entire property of the community or to approximate to it as closely as possible."[3] The fact that the state so tenaciously clung to the old system, even after its defects had been made so clear and the remedy had been so plainly disclosed, shows how firmly the theory that is based upon the taxation of all

[1] Adam Smith, Wealth of nations, 1, 654.
[2] Report of tax commission of 1876, 11.
[3] Report of tax commission of 1876, 16.

property was imbedded in the minds of the citizens of the state.

3. The changes introduced in 1878 consisted chiefly in specific provisions for securing more complete returns of the property taxable by law. The investigation of the tax commission of 1876 led to the conclusion that nearly one-half of the personalty legally taxable under the laws of the state failed to bear its just share of the burdens of government. The commission of 1878 reported that the answers received from the selectmen and assessors "are resolvable into the aggregate estimate that three-fourths of the personalty escapes taxation."[1] The commission of 1876

> frankly admit that they are unable to frame any law to which a free people would submit or should be asked to submit, that will bring this class of property under actual assessment more effectually than it now is. They believe none can be devised, unless it be by legalizing the methods for raising a revenue adopted by the old English barons of the middle ages in their dealings with contumacious Jews—the application of the thumb-screw and the rack—or at least by clothing the tax officials with despotic and extraordinary powers inconsistent with popular government and degrading to a free people.[2]

The commission of 1878 in discussing the same question reached the same conclusions: "we know of but one alternative; either to make the tax on such property [intangible personalty] so light as to be no inducement to owners to seek evasion; or to compel by the pressure of an oath, the listing of all such property."[3] Unlike the commission of 1876 that of 1878 decided to recommend the inventory under oath, adding the pains and penalty of perjury. Naturally enough the means was justified by the end. "Grant that even the stimulus of an oath will not bring all personal property within the

[1] Report of tax commission, 1878, p. 20.
[2] Report of tax commission, 1876, p. 29.
[3] Report of tax commission, 1878, p. 20.

reach of the assessors; even then it cannot be denied that every dollar thus brought forth will swell the aggregate mass of property, lower the rate of taxation and lighten the individual burden."[1] Its efficacy upon this point may be seen from the following table giving money on hand, at interest, or on deposit returned:

1872	$5,200,000	1879	$15,607,999	1893	$6,291,763
1878	4,138,000	1883	8,400,000	1894	5,987,998

Viewed in the light of these facts the words of the commission of 1876 are prophetic:

> Threatened pains and penalties and stringent oaths are ineffectual against the temptations and facilities presented for evasions, *and if to any extent they are successful, the success will be but partial.* Cunning and unscrupulous men are never at fault in devising ways and means to defeat revenue or tax laws; and so certain and extensive is the demoralizing effect of a resort to penalties and oaths to make them effectual that a feeling of opposition and resistance to the law is excited that leads multitudes of tax-payers to look upon the threatened penalties as tyrannical and oppressive, and the oaths prescribed as matters of form, and consciences are easily quieted by the thought that the law ought to be violated and the oath disregarded.[2]

SEC. 7. *Exemptions from the Inventory.* It will be remembered that the policy of taxing property only when especially enumerated was established in New Hampshire very early, if not indeed from the origin of the province in 1680. While this statement is strictly true as applied to personal property, it needs qualification when applied to real estate. It will be found upon examination of the statutes that it is usually stated that all real estate is taxable with certain exceptions therein enumerated, consequently it will be noticed that exemptions from taxation refer much oftener to real estate than to personal property. The exemptions from taxation may be divided into two classes: (1) general exemptions, (2) special exemptions.

[1] Report of tax commission, 1878, p. 21.

[2] Report of tax commission, 1876, p. 29.

1. General exemptions apply to all property of the same class or devoted to the same general purpose. The exemption may be either unlimited in time or limited to a term of years. Property which has been granted general exemption from taxation may be best treated by subdividing according to the purposes to which it is devoted.

Public property of the United States is especially exempted by law, as is that of the state or town used for public purposes,[1] and as are almshouses on county farms.[2] It was held also by the supreme court in 1894[3] that "the property belonging to the state and its minor divisions, such as counties and municipalities, which are held by them for public purposes [are] presumptively exempted from the operation of the general tax laws . . . unless the right or duty to tax it was provided for in the most positive or express terms, or by necessary implication." Such exemption grew out of "immemorial usage and universal consent." Chief Justice Smith said:

> It is certainly not true that all lands in the town were ever taxed or now are. Lands owned by the town are not taxed, and yet are not exempted by any statute; the parsonage and school-house lot are of this description. All buildings are to be taxed, but was it ever heard of to tax a meeting-house or school-house? Were the public buildings in Exeter, Concord, Hanover, etc., ever taxed? There are and always have been exemptions where the statute has not expressly made any. They depend upon invariable usage growing out of the reason and nature of the thing. They are not repealed except by express clauses for this purpose, or by provisions necessarily and manifestly repugnant.[4]

For these reasons the supreme court abated a tax on the courthouse and jail of the county of Grafton assessed

[1] Laws, 1857, 1882; 1871, 519; Public statutes, 1891, 178.
[2] Laws, 1869, 290; Public statutes, 1891, 179.
[3] Grafton Co. *vs.* Town of Haverhill.
[4] Kidder *vs.* French, Smith's N. H. reports, p. 157.

by the town of Haverhill, although the property was not exempted by any statute.

Property devoted to quasi-public uses is also exempted. The church was regarded as a public institution and the minister as a public functionary until the enactment of the toleration act of July 1, 1819.[1] Both had been exempted from taxation by immemorial custom and invariable usage. The first step at variance with the usual practice was taken in 1816, when it was enacted that the real and personal estate of ministers was to be taxable as other estates.[2] Houses of public worship, though previously exempted from the inventory by common consent, were first exempted by specific law in 1842. The report of the tax commission of 1876 urged very strongly a law taxing all church property;[3] the report of 1878 less strongly.[4] The result of the recommendations of the two reports was a temporary abandonment of the historic policy of the state upon this point. An act of 1879[5] made all church property owned by a single corporation or association in excess of $10,000 in value and used exclusively for a place of worship taxable at the same rates as other property for the total valuation of such excess.[6] In 1883 the act of 1879 was repealed by an act providing that "houses of public Worship shall be exempt from taxation."[7] Such is the law to-day.

In the laws of 1872 an act appeared exempting parsonages from taxation. This supposed enactment was re-

[1] Laws, 1824, p. 45; also Franklin St. Society *vs.* Manchester, LX N. H. Reports, p. 342.

[2] Laws, 1830, p. 39.

[3] Report, 1876, pp. 37–46.

[4] Report of tax commissioners of 1878, p. 10.

[5] Laws, 1879, p. 363.

[6] See Franklin St. Society *vs.* Manchester, LX N. H. Reports, 342.

[7] Laws, 1883, p. 58.

ferred to the supreme court in 1873 for their opinion, and was by them declared invalid on the ground that it did not regularly pass the house of representatives. No further action upon the subject was taken by the legislature until 1889. It was then enacted that "parsonages of religious societies owned by said societies and occupied by the pastors thereof, not to exceed the sum of $2500 to any society[1] " should be exempt from taxation.

With regard to the taxation of the property of seminaries of learning the policy of the state has been more uniform. In 1842 seminaries of learning, exempted by usage before,[2] were first exempted by specific enactment, and since that date there has been no change in the law. The only question has been as to what extent property owned by educational institutions, but not specifically devoted to educational uses, should be exempted from taxation. In 1780 it was enacted that the lands appropriated to the use of Dartmouth College be exempted from taxation.[3] "Under this vote total exemption for all lands owned by the college was for a long time claimed even in favor of tenants for years. But in 1839[4] the supreme court in a case regarding taxes in Lebanon decided that the resolution was temporary in its character, and not a permanent exemption from taxation and that the subsequent adoption of the constitution and passage of general laws for the assessment and collection of taxes terminated the operation of it."[5] The interpretation of the clause enacted in 1842

[1] Laws, 1889, p. 52.

[2] See report of commission to investigate exemptions in the state, House journal, 1819, p. 79.

[3] VIII N. H. State papers, p. 879; Chase, History of Dartmouth College, I, p. 570.

[4] Brewster *vs.* Hough, X N. H. Reports, 138.

[5] Chase, History of Dartmouth College, I, p. 570.

that "all real estate, except seminaries of learning, is liable to be taxed" is actually left to the local board of assessors,[1] and accordingly varies from place to place and from year to year.

It is probable that stock in corporations devoted to charitable purposes has never been taxed in this state. The first definite enactment upon this subject occurred in 1842[2] in the provision that stock in corporations should be taxed if "a dividend or income is or may be derived from it." This provision was made more explicit in 1867[3] by the enactment that "stock in corporations shall not be taxed, if the nature and purpose of the corporation be such that no dividend of its profits is to be made." The provisions quoted referred to stock of non-income producing corporations. It was not until 1895[4] that the real estate of public and charitable associations was legally exempted by the enactment that "all public cemeteries and all property held in trust for the benefit of public places for burial of the dead and so much of the real estate and personal property of charitable associations, corporations and societies as is devoted exclusively to the uses and purposes of public charity are hereby exempted from taxation."

England's colonial policy prior to the Revolution did not favor provincial manufactures, and accordingly any encouragement of local manufactures, either by exemption from taxation or more direct methods, would have been promptly vetoed by the royal governor. With the advent of peace in 1783 and the return to normal industrial conditions the young state encouraged several industries by exempting their property for a term of

[1] Subject, of course, to revision on appeal to the courts.
[2] Revised statutes, 1842, p. 102.
[3] General statutes, 1867, p. 116.
[4] Laws, 1895, p. 426.

years. It was affirmed in the preamble of the act that "the manufacturing of oil from flax seed, within this state will furnish employment for poor persons, have a happy influence over the balance of trade, and greatly contribute to the wealth of the good subjects of this state." Therefore it was enacted that "if any person or persons shall, within two years, erect and set up, or if already set up, shall continue, a mill for the manufacturing of oil from flax seed, such mill or building shall not be subject to any tax for ten years."[1] The slitting, rolling, and plating of iron and the making of nails within the state, the preamble stated, "would prevent large sums of money being drawn" out of the state "to foreign countries." This act,[2] accordingly, not only exempted the mills, buildings, forges, and engines for ten years,[3] but also granted an abatement for seven years of the owners' taxes for as many poll taxes of "proper" workmen as were employed in the mill. The same reason was given for the exemption of establishments for the manufacture of sail cloth or duck as was given in the case of the rolling mills, viz.: to keep the money at home. The exemption was for ten years with abatement for poll taxes similar to that granted to the owners of the rolling mills.[4] The manufacture of malt liquors would, it was thought by the legislature, "tend to promote agriculture, diminish the use of ardent spirits, and preserve the health and morals of the people," accordingly the buildings and yards were exempted for ten

[1] Perpetual laws, 1789. p. 196 (passed June 21, 1786).

[2] Perpetual laws, 1789, p. 200 (passed September 2, 1787).

[3] It also offered a premium of £100 and perpetual exemption from taxation for the first mill erected, provided it should be finished within one year from the date of the act.

[4] Perpetual laws, 1789, p. 205. A premium of £50 was given to the first mill, with exemption as in the case of the rolling mills.

years, the owner or owners were exempted from all poll taxes, and the abatement of taxes of workmen allowed as in the two previous cases.[1] The first three of the acts enumerated above were repealed by act of June 18, 1805.[2] The same year, 1805, the buildings, machinery, and stock of cotton mills were exempted from all taxes for five years, provided the mills were operated. By act of December 22, 1808,[3] all establishments for the manufacture of cotton and cotton yarn and of woolen and woolen yarn were exempted upon their capital stock from $4000 to $20,000 for a period of five years. This act was repealed June 22, 1814,[4] but later, in 1816,[5] an act was passed exempting the capital stock of similar industries not exceeding the amount of $10,000 for a period of two years.

In 1819 the policy of exemption was made the subject of a special legislative report.[6] The inquiry was as to the "amount of property exempted from taxation by the several charters" of the corporations in the state. The report stated:

> The property freed from taxation is principally that of academies and manufacturing companies, and is exempted either for an unlimited term or for a certain term of years. It is also, in some instances, exempted to a certain extent of capital; in others according to the net annual income. The amount of corporate property exempted from taxation may be therefore classed under the three following heads:
>
> 1. That exempted without limitation of time, $1,112,833.
>
> 2. That upon which the term of exemption has not expired, $222,000.
>
> 3. That in which the term has expired or will expire during the present session, $661,000.

[1] Laws, 1797, p. 400 (passed December 22, 1792).
[2] Laws, 1805, p. 12; Compiled laws, 1805, p. 400.
[3] Laws, 1808, p. 30.
[4] Laws, 1814, p. 503.
[5] Laws, 1816, p. 39.
[6] House journal, 1819. p. 79.

That this investigation occurred during the session of the legislature in which the toleration act became a law was the result of that great movement toward democratization in the United States which reached its height at the middle of the nineteenth century.[1]

From 1816 to 1860 no general acts exempting the capital of industrial enterprises were enacted in this state. The act of July 3, 1860, "to encourage manufactures" required the assent in a legal manner of the towns interested to give it effect.[2] The vote of the town to exempt any such manufacturing industry was to be a contract binding it for the term specified. This act provided that all manufacturing establishments erected by individuals or corporations for the manufacture of cotton and woolen fabrics and all capital and machinery actually used in operating the same should be exempt from taxation for a period of ten years. By act of 1871[3] the exemption upon the same condition was extended to embrace "any establishments . . . for the manufacture of the fabrics of cotton, wool, wood, iron or any other material."[4] As in the act of 1860, the vote of the town making the specific exemption was to be "a contract binding for the term specified."[5]

[1] Bryce, American commonwealth, 3d. ed., vol. 1, p. 451.

[2] The supreme court held in 1890 (LXVI N. H. Reports, p. 274) that the vote must be specific. A vote to exempt any establishment hereafter erected for the manufacture of certain goods would not be sufficient to exempt an establishment afterwards erected.

[3] Laws, 1871, p. 259.

[4] See LXV N. H. Reports, 177. The court held that a vote of the town to exempt a manufacturing establishment in effect exempted the land upon which the building was erected, although such land had been previously taxed.

[5] The justices of the supreme court (Opinion, Laws, 1879, Appendix, pp. 423–425) held that "if the true construction of the state constitution did not authorize the making of these contracts they are binding nevertheless." After referring to well known decisions of

Two amendments to the act of 1871 have been enacted: (1) that of 1885,[1] providing that exemption from taxation should not be granted by one town to any manufacturing industry of another town as a condition of its removal from that town to the bargaining town; (2) that of 1887,[2] providing that "no town shall vote to exempt from taxation any establishment as aforesaid or capital used in operating the same, belonging to any person, form or corporation who shall have been previously exempted by another town in this state." The object of both of these amendments was to prevent manufacturing establishments from moving from town to town at the expiration of each period of exemption in order to escape taxation. The second amendment has accomplished this purpose.

A manufacturing industry of a different character from the above was exempted by act of July 7, 1881.[3] This act, entitled "an act to aid shipbuilding," allowed any town "by vote to authorize its proper officers to make contracts with individuals to exempt from taxation for a period not exceeding ten years all materials of wood, copper, iron and steel used in the construction and building of ships and vessels in such town and the ships and vessels constructed therefrom while in the process of construction." This act appeared unchanged in the public statutes of 1891[4] and is still in force.

the United States supreme court to support their view they continued, "should it now be decided that the true construction of the Constitution does not authorize these ten year exemption contracts, the decision could have no retrospective effects. No such contracts hereafter made would be binding, but those heretofore made under different construction would remain in force. Upon these principles of integrity and fair dealings the government was founded."

[1] Laws, 1885, p. 292.

[2] Laws, 1887, p. 420.

[3] Laws, 1881, p. 442.

[4] Public statutes, 1891, p. 180.

It was not until 1868 that the tide of democratization had receded sufficiently in New Hampshire to allow any public favors to be granted to railroad corporations. By act of July 3, 1868,[1] it was enacted that "the capital of all railroads hereafter constructed in this state shall be and the same is hereby exempted from taxation for the term of ten years from the time of commencement of the construction of such railroads respectively." This enactment appeared unchanged in the general laws of 1878,[2] but was repealed in 1881,[3] and the following provision differing but slightly in its terms was inserted in its place: "But any portion of every railroad which has not been completed and opened for use for the period of ten years from the 15th day of September in each year preceding the time when such tax is assessed shall be exempt from taxation." Since 1881 the law upon this subject has not been changed.[4]

The general policy of the state has been to tax all land, whatever its condition, according to its valuation. From 1796[5] to 1891, however, towns had authority "to exempt unimproved lands of non-residents from any tax or part thereof." This provision was dropped from the laws in the public statutes of 1891. The only exemption now of importance was enacted in 1878,[6] when it was provided "that any person who shall reclaim any swamp or swale lands by underdraining, ditching, or irrigation, either or both, or in any other manner for purposes of agriculture shall be entitled to exemption from taxation on such improvements for a term of ten years from the time when

[1] Laws, 1868, p. 151.

[2] General laws, 1878, p. 160.

[3] Laws, 1881, p. 488.

[4] Public statutes, 1891, p. 201.

[5] Compiled laws, 1797, p. 455; Revised statutes, 1842, c. 43; General laws, 1878, chap. 57, sec. 2.

[6] Laws, 1878, p. 175.

said improvement shall be made to the satisfaction of the selectmen of towns in which said lands are situated."[1]

For the sake of a more complete and symmetrical view of the subject of exemption from taxation, the following enumeration of property never taxed in this state is added: farming implements, farm products, and the young of farm stock;[2] tools of mechanics and artisans; household furniture, books, musical instruments, works of art, plate, jewelry, and personal clothing.[3]

2. Special exemptions are made by special act of the legislature and apply only to the property definitely described in the act. Without entering upon detailed treatment of this topic, the general policy of the state may be outlined.

From the beginning of statehood to 1830 the state favored the establishment of industries not only by general acts but also by special exemptions. Chief Justice Parker, referring to the exemption granted by the act of 1816, said, "and special exemption of different establishments for a much larger amount and for longer term were granted from time to time."[4] The legislative report of 1819, already cited, gives more direct evidence in regard to the nature and amount of such exemptions. The following examples, taken at random, may serve for illustration. At New Ipswich in 1808[5] a mill was exempted to the amount of $20,000

[1] It was further provided that "the above act shall not apply to lands adjacent to villages or cities which shall be so improved for purposes of building lots or speculation."

[2] Sheep were not taxed until 1830; swine were not taxed until 1874, and since then two to each family have been exempted; carriages are taxed only when exceeding $50 in value.

[3] LX N. H. Reports, 92; Attorney General Tappan estimated that "fully one-fourth of the sum of the whole valuation, or more than $50,000,000," was exempt from taxation by law.

[4] Smith *vs.* Burley *et al.*, IX N. H. Reports, 423.

[5] Laws, 1808, p. 16.

for twenty years. In 1816[1] a flint glass factory was exempted for five years not exceeding $10,000 in value. In 1820 the above act was continued in force for a second period of five years.[2] In 1827[3] the stock of the New Hampshire Canal and Steamboat Company actually employed in construction and equipment was exempted from taxation until the annual profit equalled 6 per cent on the money actually expended. The next year, 1828,[4] the stock of the Connecticut River Canal Company was similarly exempted, but not to continue over thirty years.

During the period from 1831 to 1860 neither general nor special exemptions were favored. The report of the tax commission of 1876 stated that "for a period of about thirty years preceding 1860, no legislation was had in this state of which we are aware exempting the property of manufacturing or mechanical industries from taxation."[5] The writer's investigation leads him to endorse this view. Nor does there appear to have been any legislation of importance granting special exemptions to other than manufacturing and mechanical industries.

The period from 1860 to the present time has been characterized by the adoption of the policy that was favored in the first, viz., a readiness to grant the aid of the state to establish certain industries that have failed to establish themselves under the stimulus of existing economic conditions. Since under the general laws of the state manufacturing and other industrial establishments are authorized to be exempted by vote of the

[1] Laws, 1816, p. 41.
[2] Laws, 1820, p. 346.
[3] Laws, 1827, chap. 66.
[4] Laws, 1828, chap. 78, p. 334.
[5] Report of 1876, p. 18.

town wherein they were situated the special exemptions granted by the legislature are found to refer to other interests. Thus in 1875[1] Gorham was authorized to exempt the Alpine House[2] and lands for a period of ten years. In 1883 the town of Milford was authorized to exempt Hotel Ponemah for a period of ten years or less. In 1889 Dartmouth College was granted an exemption for ten years on the hotel property known as the Wheelock. In 1874 the Simonds Free High School of Warner was granted exemption on its school fund for the value of $85,000. In 1883 the Orphanage and Home for Old Ladies in Manchester was exempted "so long as used for its present purposes." In 1887 a vote of the town of Hillsborough exempting its town system of waterworks for a period of ten years was legalized. In 1890 the Thompson estate, bequeathed to the state for the benefit of the Agricultural College, was permanently exempted from taxation.[3]

Such, in brief, has been the policy of the state of New Hampshire in regard to exemptions from taxation. While it may be admitted that the state has attempted to tax some classes of property which from their nature are able to elude in most cases the utmost vigilance of assessors and in this way cause inequality of burden while at the same time indirectly promoting dishonesty and disregard of law, it will be readily granted that in respect to household furniture, wearing apparel, tools and implements, and the property of industrial and charitable associations, the state has been singularly liberal in exercising the sovereign power of taxation.

[1] Laws, 1875, p. 440.

[2] A hostelry at the foot of Mt. Washington.

[3] For a further list of exemptions see the general index to the laws of 1891 and 1895.

CHAPTER VI.

THE COMMONWEALTH REVENUE, 1776–1900.

SEC. 1. *Taxes on the Inventory.* For convenience we may subdivide the period under consideration into three parts :—

1. From 1776 to 1789. During this period the taxes on the inventory were used largely to liquidate the loans, and were supplemented by important excise and impost taxes. The nominal amount of the tax levied varied with the depreciation of the paper "facilities"[1] in which it was payable. For example, in 1778 the state tax was £80,000 in lawful money; in 1779, £250,000 for the state and £450,000 for the United States; in 1780, £2,160,000, one-half for the state, one-half for the national government; in 1781, £100,000 in bills of the new emission; in 1784 it reached the normal figure of £25,000 lawful money. During this period an occasional specie tax was imposed: for example, in 1781, £5000 to pay interest; in 1786, £10,500 for the United States foreign debt; from 1787 to 1790, from three thousand to five thousand pounds per year for various purposes.

2. From 1790 to 1841. During this period the tax on the general inventory furnished the bulk of the state revenue, and was, in fact, the only permanent and reliable source of income for the state treasury. From 1790 to 1842 the annual tax on the inventory rose from $15,000 to $60,000: in 1795 it was $26,666.67; from 1803 until 1826, $30,000 annually; from 1829 to 1835, $45,000; then, after fluctuating from $35,000 in 1836 to $65,000 in 1835–7, it settled down at $60,000 annually.

[1] That is, bills of credit of the various denominations.

3. From 1842 to the present day. During this period the state tax has been absolutely much larger than in the preceding period, but relatively of decreasing importance. This has been effected by a series of special taxes upon corporations and business interests, beginning with the taxation of railroads by the state in 1843, and expanding into the series of corporation taxes which were particularly characteristic of the tax revision in 1878. From 1843 until 1850 the annual tax on the inventory was continued at $60,000 annually. During the next decade it was placed at $70,000 annually. The tax increased rapidly during the Civil War, and reached a maximum in the years 1865 and 1866 of $750,000 annually. From 1866 it gradually dropped to $400,000 annually, where it remained from 1873 until 1887. Since the latter date the state tax has been fixed at $500,000 per year.

SEC. 2. *Taxes on Railroad Corporations.* Previous to 1842 the stock in all corporations was taxable to the owners as personal property[1] in the towns where they resided. The commissioners appointed in 1842 to revise the statutes reported the law without changes, making its provisions include the stock of railroads as well as of other corporations.[2] After a full discussion of this clause, the legislature adopted an entirely new method—a change of the most far reaching importance in the history of taxation in the state. The act of 1842 provided that "every railroad corporation[3] shall pay to the state treasurer . . . . one per cent on the value of that part of its capital stock ex-

[1] Laws, 1833, p. 98.

[2] Commissioners' report, 1842.

[3] At this date there were about one hundred miles of railroad in the state.

pended within this state to be determined by the certificate of the justices of the Superior Court."[1]

The agent of every railroad corporation was required to transmit annually to the state treasurer a certified statement of the shares owned in each town and by whom owned, and any other necessary information. In 1860 an amendatory act made it the duty of the treasurer of a railroad corporation under penalty to keep a book showing the names and residences of the owners of the shares, as well as to make annual returns of the same. This was supplemented by a provision requiring the assessors of the several towns to return the number of shares owned in their respective jurisdictions as a prerequisite to receiving their proportion of the railroad tax. No other change occurred in the law until 1867. The statute is plain in its statement that it was the capital stock that was subject to taxation, and such was the interpretation uniformly put upon it by the justices of the superior court in making the valuation. The general statutes of 1867 made no change in the method of valuation, but altered the rate of taxation by requiring that the "capital"[2] of every railroad corporation expended in the state should be taxed "as near as may be in proportion to the taxation of other property" in the town in which the part of the railroad under consideration was located instead of at the uniform rate of one per cent.[3]

[1] Revised statutes, 1842, p. 103. This tax was to be divided and apportioned as follows: (1) to the several towns in which any railroad might be located one-fourth, each town to receive in proportion to the capital stock expended therein; (2) to the several towns in which the stock was owned three-fourths of the one per cent paid on the stock owned in such town; (3) the remainder for the use of the state.

[2] The omission of the word "stock" after the word "capital" was held not to alter the meaning of the phrase.

[3] General statutes, 1867, p. 130.

The taxation of railroads was not considered in the report of the tax commission of 1876. The commission of 1878, however, gave the subject ample consideration, both in public hearings in which the railroad corporations were represented, and in their published reports.[1] They stated that

> The capital of every railroad expended in this state is required to be taxed as near as may be in proportion to the taxation of other property . . . standing alone this would seem to be a perfectly fair basis, its meaning is unmistakable. The "capital expended" must include the original investment whether of cash or borrowed capital, and the improvements whether made from the avails of new stock or bonds or from the earnings. Does the present method of assessing the railroad tax conform to this law? It does not, because in practice the assessors simply determine the present value of the original capital stock invested. If the original stock, from any cause, has become worthless or has only a nominal value, the assessment is only nominal. This construction of the statute, or rather this invariable practice of the assessors, seems to be based on the doctrine of precedents rather than on the plain intendment of the law.

The commissioners also questioned the equity of the results obtained by the method of distribution in use, on the ground that towns where large blocks of stocks were held temporarily or speculatively or pledged as collateral on the first day of April, or towns where the stations and other buildings were exceptionally valuable, received an undue benefit from the tax apportioned them. On the above ground the tax commissioners recommended an act by which "every railroad corporation in this state (not exempt by law) [should] pay to the state an annual tax upon the actual value of the road, rolling stock and equipments at the average rate of taxation in all the cities and towns of the state,"[2] the valuation and

[1] Report of tax commission, 1878, pp. 15, 43, 173.

[2] Subject to a deduction equal to the amount of tax assessed by local assessors upon buildings and right of way, which tax was to be retained by the towns through which the roads passed.

rate to be determined by a board of equalization. Certain fixed rules were laid down by which the board of equalization was to be governed in determining the valuation; if from mismanagement or any other cause the stock, etc., had only a nominal value, it was recommended that such road be taxed at a fixed sum per mile and for the value of its rolling stock and equipments, such sums to be determined by the state board of equalization.[1] Upon consideration of the above report the legislature adopted the provisions recommended by the commission upon two points: (1) that the tax should be laid upon "the actual value of the road, rolling stock and equipment"; (2) that the actual value and the rate should be determined by the state board of equalization. The legislature clung to the former method of distributing and rating "as near as may be in proportion to the taxation of other property in the several towns and cities in which such railroad is located." It rejected the proposals of the commissioners in regard to the method of fixing the valuation as well as the assessment by the mile when, through mismanagement, the stock had only a nominal value. To facilitate the work of the board of equalization the railroad corporations were required to furnish all necessary information, and upon neglect to do so were made liable to a doomage of two per cent upon capital stock and debt. In other points the act was not essentially changed.

By a subsequent act, August 9, 1881,[2] the law of 1878 was so amended that every railroad corporation was required to pay an annual tax as near as might be in proportion to the taxation of other property in all the towns and cities instead of in proportion to the rate in the

[1] Report of tax commissioners, 1878, pp. 173–5.

[2] Laws, 1881, chap. 53, sec. 1.

several towns in which the railroad was located.[1] Since 1881 the law has not been changed in its essential features.

The revenue received from the taxation of railroad corporations in New Hampshire bears striking testimony to the efficiency of the direct method of taxation of corporate property on the corporation itself. In 1844 the total revenue was $15,635.67, of which $8,405.55 was retained by the state. Ten years later the total income from the same source was $61,590.36, of which $30,420.74 went to the state treasury. In 1864 the tax was not far different. With the industrial expansion following the Civil War a notable increase in revenue from the railroad tax is noticeable. In 1868 it was $203,284.64, of which $111,547.76 was retained by the state. During the twenty years following the annual tax received was from $150,000 to $240,000, the average being not far from $190,000, of which a little less than half went to the state. From 1888 to 1898 the tax regularly increased until it reached a total of over $325,000, of which about seven-twelfths was distributed to the towns and the remainder used to lessen the state tax upon polls and ratable estate.

SEC. 3. *Taxes on Savings Bank Deposits and on Trust Companies.* Prior to 1864 money deposited in the savings banks of the state was included in the general inventory and taxed as personal property. The expenses of the Civil War necessitated an unprecedented increase in the state tax. Under the old method the accumulations in saving banks were largely escaping taxation. The success of the railroad corporation tax pointed out the way, and the act of 1864 providing for

[1] See decision of the supreme court, B. C. & M. R. R. *vs.* State, LX N. H. Reports, p. 87.

the direct taxation of savings bank deposits by the state was the result. The treasurer of each of the banks was required to make out a detailed list of the depositors and of their deposits,[1] and to pay annually to the state treasurer a tax of three-fourths of one per cent on the accumulated amount, in lieu of all other taxes upon either banks or deposits. In 1889 the provisions of the same act were extended to include the "capital stock and the deposits upon which interest is paid" of all trust companies, loan and trust companies, and other similar corporations in the state. The tax thus assessed and collected by the state treasurer is divided into two parts: (1) that assessed on the deposits of residents of the state, and (2) that assessed on the deposits of non-residents. The former is distributed to the towns and cities in proportion to the share of each in the total deposits; the latter becomes a part of the literary fund and is then by law distributed as state aid to the common schools.[2] The rate of the tax on savings bank deposits was originally three-fourths of one per cent. In 1869 the rate was raised to one per cent, where it remained until 1895, notwithstanding the urgent protests of the banking interests.[3] The taxation of savings bank deposits has been intimately bound up with the taxation of two other classes of property: (1) the real estate held by the banking corporations, and (2) the capital stock of the loan and trust

[1] By an amendment of 1865 the bank treasurers were required to make separate lists (1) of the sums deposited by the residents of the state, and (2) of the sums deposited by non-residents. Laws, 1865, p. 3117.

[2] By amendment of 1866. The act of 1864 provided that the tax on deposits of non-residents should remain in the state treasury.

[3] It was stated in a hearing before the tax commissioners of 1878 that the competition of the Massachusetts and of the Vermont savings banks was seriously affecting the deposits in the New Hampshire banks.

companies. In 1872 the real estate held by the banks of the state was excluded from the above tax, being made taxable, as formerly, in the respective towns. In 1891 the treasurers of banks and trust companies were required to separate their general and special deposits from the capital stock, but the rate was to continue at the uniform rate of one per cent on all the classes. In 1895, after considerable discussion, an amendatory act was adopted providing (1) that the rate upon capital stock and upon the special deposits be continued at one per cent, and (2) that the tax upon general deposits upon which interest was paid be reduced to three-fourths of one per cent after deducting, in addition to its real estate, "the value of its loans secured by mortgages upon real estate situated in this state made at the rate not exceeding five per cent per annum."

The tax upon savings bank deposits and other savings institutions is still another impressive example of efficient methods of taxation. The tax is easily and cheaply collected, it is equitable, and it is certain. The following table, comparing the amounts of savings bank deposits with all other personal property returned for taxation for certain years, is worthy of careful study :—

Year.	*Savings bank deposits taxed.*	*All other personal estate taxed.*	*All real estate taxed.*
1860	[1]	$28,506,065	$ 77,748,762
1867	$10,297,035		
1872	24,654,672		
1877	30,318,320		
1881	31,787,832	36,313,848	123,511,284
1883	38,786,507	37,757,093	128,417,205
1885	43,402,663	36,443,848	130,298,843
1887	56,361,325	37,030,031	131,693,411
1890	63,846,977	35,410,721	140,310,932
1893	77,024,282	35,985,697	150,209,160

[1] Savings bank deposits were included in "All other personal estate".

SEC. 4. *The Revenue from Insurance Companies.* The revenue from insurance companies has been derived from two distinct sources: (1) from taxes on the capital stock or on the business; and (2) from fees of several kinds. Prior to 1869 shares or stock in insurance companies were taxable to the owner, if the owner was a resident of the state;[1] otherwise they were taxable to the corporation at the principal office in the state.[2] By an act of 1869[3] the taxation of foreign insurance companies doing business in the state was assumed by the central government. Every such insurance company was required to pay to the treasurer of the state a tax of one per cent upon the gross amount of premiums received.[4] All companies wishing to do business in this state had first to take out a license issued by the insurance commissioner, for which a small fee was exacted.[5] Failure to furnish the proper information or to pay the assessment after due notice had been given was sufficient cause for the revocation of the license.

The enactment of the so-called "valued policy law", to take effect January 1, 1886, led to the withdrawal, *en masse*, of all the foreign fire insurance companies in

[1] In 1852 a retaliatory act was passed providing that insurance companies organized under the laws of any other state should pay the same taxes, fees, etc., in New Hampshire as such other state imposed upon any company organized under the laws of New Hampshire and doing business in such other state. Similar acts were passed in 1891 and in 1895, providing that burdens imposed upon New Hampshire insurance companies abroad might be offset by retaliatory taxes, fines, penalties, etc., upon insurance companies from the offending state.

[2] Revised statutes, 1842, p. 104.

[3] Laws, 1869, p. 276.

[4] A sworn statement was required from every insurance company showing the amount of premiums received in money and in the form of notes, credits, loans, or any other substitute for money, on persons or property in the state.

[5] See section on insurance fees, p. 121.

the state.[1] The immediate effect of this withdrawal was the organization of a considerable number of stock, mutual, and town insurance companies under state law. This somewhat unexpected result of legislation intended to safeguard the interests of the policy holders made a general law for the taxation of home insurance companies desirable. At the June session of the legislature in 1869 several stock fire insurance companies were chartered,[2] of which only the New Hampshire Fire Insurance Company of Manchester seems to have been fully organized and to have assumed fire risks. No provision for its taxation was made in its charter, but in 1870 the charter was amended so that the company was directly taxable by the state. The treasurer of the company was required to make annually a sworn statement to the treasurer of the state of the name and residence of each of the shareholders in the company on April first, with the number of shares owned by such person. Upon such capital stock the company was required to pay a tax of one per cent, in lieu of all other taxes against said company or its shareholders.[3]

Subsequently, in 1887,[4] the act for taxing the capital

[1] Fifty-eight companies in all. The law provided, in substance, that in case of total loss by fire or of other casualty to real estate or buildings, "the amount of damage shall be the amount expressed in the contract as the sum insured, and no other evidence shall be admitted on trial as to the value of the property insured." In case of partial loss the actual damage only was taken.

[2] Laws, 1869, pp. 347–351.

[3] Laws, 1870, p. 483. This tax was to be divided as follows: "One-fourth of said one per cent shall be retained by the treasurer for the use of the state and the three-fourths of said one per cent. to be by him distributed to the several towns in the state in the same proportion that the number of shares owned in each town bears to the whole number of shares. The tax on all shares owned by persons residing out of the state shall be retained by the treasurer of the state for the use of the state."

[4] Laws, 1887, p. 442.

stock of the New Hampshire Fire Insurance Company was made general, so that all stock fire insurance companies organized under the laws of the state and doing business in the state were subjected to the same tax, viz., one per cent upon the capital stock.[1]

In 1870–1871, the first year in which there was a fair test of the revenue-producing qualities of the tax, the amount that was paid into the state treasury by both foreign and home insurance companies was $11,115.78. In 1873–1874 it reached its first maximum at $12,179.41. From this date there was a gradual falling off until 1879–1880, when the first minimum was reached at $7,389.79. In 1884–1885 the tax reached $10,081.59. The next year, the year of the "exodus", the tax touched low water mark at $4,831.56. Since 1885 it has regularly increased, and in 1896–1897 the proceeds of the tax were $26,195.88. The revenue to the state from the tax on insurance companies has thus averaged something over $10,000 per year, and in addition several thousand dollars per year has been distributed to the towns.

In 1867[2] a fee of $5.00 annually was assessed on each foreign insurance company doing business in the state for filing a statement of its standing and condition. In 1869[3] an annual fee of $100 was required of every non-

[1] In 1889 the foreign companies began to return, until, on December 1, 1890, thirty-seven of the fifty-eight companies "that made such sudden exit, becoming weary of waiting for the calamity that they had predicted would fall on New Hampshire, had returned and resumed business, gracefully conforming to our laws." Message of the governor, I State reports, 1890, p. 6. In 1895 the insurance commissioner reported that "nearly all the companies that left the state in 1885 have returned and with them many others and they are still coming." Report of insurance commissioner, 1895, p. xv.

[2] General statutes, 1867, p. 328.

[3] Laws, 1869, p. 276.

resident insurance agent soliciting business in the state. Since that date the fees exacted have been more uniform, as may be seen from the table below :—

	Home insurance companies.		*Foreign insurance companies.*	
	1870	*1889*	*1870*	*1889*
For filing statement of standing and condition of company annually	$5 00	$5 00	$5 00	$15 00
For license and annual renewal	----	----	5 00	5 00
For filing copy of charter	----	----	----	25 00
For agent's license and annual renewal	----	----	1 00	20 00
For certificate of examination and qualification	----	5 00	----	----
For each service of legal process upon insurance company as attorney	----	2 00	----	----
For each copy of paper on file, ten cents per page; for certifying the same	----	1 00	----	----

From 1869 to 1887 the commissioner received all fees accruing to the office as his salary and as expenses for clerk hire, etc. By the act of 1887[1] he was allowed an annual salary, and all fees after that date were paid quarterly into the state treasury. The amount of fees thus turned into the state treasury in 1887–1888 was $818. For the first year after the act of 1889, increasing the fees, the amount was $4519. In 1896–1897 the revenue was $9,832.05.

SEC. 5. *Taxes on Telegraph and Telephone Companies.* The direct taxation of telegraph companies dates from 1878. At the session of the legislature held in 1877 a bill was introduced and referred to the board of tax commissioners authorizing a tax of two per cent upon the gross receipts of all telegraph companies doing business in the state. The act recommended by the tax commis-

[1] Laws, 1887, p. 428.

sioners, and enacted in 1878,[1] however, provided for a tax of one per cent upon the value of the property of the several companies, including the office furniture and machinery. The appraisal was to be made by the board of equalization at the actual value of the property. The assessment was made annually, in August, by the same authorities, and the tax was payable to the state treasurer on or before the first day of September following. The tax so assessed and paid was to be in lieu of all other taxes. The above act was amended August 9, 1881,[2] by changing the rate of taxation from one per cent to "an annual tax as near as may be in proportion to the taxation of other property throughout the state," and by requiring the state board of equalization to "assess said telegraph property at the average rate of taxation of other property throughout the state."[3] Under the provisions of the act of 1878 the revenue from the taxation of telegraph lines was somewhat less than $1000 annually. Under the act of 1881 the revenue has exceeded $2000 annually, and for the year ending May 31, 1897, was $3,190.40.

Until 1883 the stock and other property of telephone companies was taxed in the same manner as that of other corporations for the taxation of which no special laws existed.[4] The act of September 15, 1883, provided for the assessment of a tax on telephone companies in a manner entirely similar to the taxation of telegraph companies, as described in the preceding paragraph of this section. The revenue from this source has run very nearly par-

[1] Laws, 1878, p. 182.
[2] Laws, 1881, p. 471.
[3] B. C. & M. *vs.* State, LX N. H. Reports, p. 87.
[4] General laws, chaps. 57, sec. 1; chap. 53, sec. 5; chap. 54, sec. 5.

allel with that from the taxation of telegraph companies. In 1896–97 it was $3,129.60.

SEC. 6. *Fees.* The revenue from fees has been derived from the following sources: (1) license fees from peddlers, hawkers, etc.; (2) fees for corporation charters; (3) license fees for the sale of lightning rods; (4) license fees for the sale of fertilizers; and (5) license fees for the practice of dentistry.

1. The fiscal policy of the state in its relation to the business of hawkers, peddlers and itinerant merchants may be grouped by periods as follows:—

(1) From 1821 until 1878. During this period hawkers, peddlers, auctioneers, and itinerant merchants were licensed by a county officer, and the revenue from the license fees was turned into the county treasury.

(2) From 1878 to 1893. The tax commissioners of 1878 recommended that the proceeds of this tax be appropriated to the state treasury, and their advice upon this point was accepted. The applicant for a license, in order to do business under this act,[1] had first to procure of the clerk of the supreme court a state license, for which he paid a small fee; this license authorized the several county clerks to issue permits to do business within their respective territorial limits.[2] The clerk receipted for the fee on the back of the license,[3] and for-

[1] Commercial travellers, venders of fish, fruits, vegetables, provisions, fuel, newspapers, or of the products of their own industry, and those incapable of manual labor, were exempted from the provisions of the act.

[2] The fees for each county were $10 for a hawker or peddler, $20 for an auctioneer merchant, and $50 for an intinerant or temporary merchant. Laws, 1878, p. 104. In 1883 the fee for the last two classes was raised to $100 each.

[3] This receipt on the back of the license was, of course, the licensee's evidence of authority to sell his goods. Selling without license was punishable by appropriate fines of from $100 to $200.

warded the amount to the state treasurer for the use of the state. This act, with the amendment of 1883, was repealed in 1887 and a new act substituted. The act of 1887[1] was, however, in effect an amendment to the act of 1878. The general license was obtained as before, while the permission to sell in any county was granted directly by the clerk of the supreme court. The list of exemptions was essentially as in 1878, but the schedule of fees was changed to favor those who desired a state license.[2]

(3) From 1893 to the present time. During this period the licenses have been issued by a state officer upon recommendation of a local officer, and the fees have accrued to town, county, or state, according to the territorial limits for which the license has been issued. Under the act of 1893 the applicant for authority to sell goods as a hawker, peddler, etc., must be recommended to the secretary of state[3] by a mayor of a city or by the selectmen of a town. The license is then issued for a town, a county, or the state, as the applicant desires. The fees for a town license are graduated according to the size of the town, varying from $2.00 to $20.00; for a county, $25.00; for the state, $50.00. Temporary or itinerant merchants are licensed directly by the town where they wish to do business. The act of 1893 was, in its nature, a decided reaction against the centralization which had formerly been effected. It bears strik-

[1] Laws, 1887, p. 452.

[2] Hawkers, peddlers, or itinerant venders, $25 for each county, $50 for the state; temporary merchants, $50 for each county.

[3] Soldiers and sailors, disabled either during or since the war, are exempt from the payment of fees, except the $1.00 fee to the secretary of state for drawing up the license. The other classes exempted are not essentially changed, except that those unable to perform manual labor are not exempt.

ing testimony to the spirit of local independence that still is found in the Granite State.

Under the act of 1878 and its amendments the revenue from the above source averaged about $1000 annually. Under the act of 1887 it averaged nearly $2000 per annum. Under the law of 1893, in 1893–1894 it was $1550; in 1894–1895, $950; in 1896–1897, $2550.

2. Until 1877 New Hampshire, following the American custom, paid her legislators for the time expended in enacting charters, and presented their franchises and privileges as a free gift[1] to the incorporators. In 1877 this policy was partially reversed. Banking, railroad, insurance, and other corporations were required to pay certain fees to the state[2] for the privilege of incorporation, and additional fees for subsequent changes. This act has been twice amended, first in 1889, and second in 1895. The act of 1889 applied only to those corporations which did not carry on all of their business and did not have their principal office in the state. The tax was a graduated one, decreasing in rate with the increase in the authorized capital stock. One per cent on the stock authorized up to $50,000, it decreased gradually to three-eighths of one per cent for corporations having capital stock in excess of $1,000,000. Under this act corporations within the state, organizing under the so-called "voluntary laws" relating to corporations, paid no fees, while the rate for foreign corporations was practically prohibitory. Governor Busiel in 1895[3] called at

[1] See Bryce, American commonwealth, 2d ed., vol. 1, chap. 44, for an example of European criticism of this policy.

[2] Banks of discount, $1.00 on $1,000 in certified stock; savings banks, $100; railroads and insurance companies, fifty cents on each $1,000 authorized capital; other corporations, $50.00; supplementary acts, $25.00.

[3] Governor's message, State reports, 1895.

tention to these defects in the law, and urged that they be revised to meet the needs of modern conditions. His advice upon the first point fell upon deaf ears; upon the second point the legislature deliberated and as a result the scale of fees was lowered considerably. They now range from $10 for a capital stock of $25,000 to $200 for one of over $1,000,000.

The revenue from charter fees during the first year the act of 1877 was in force amounted to only $740. The maximum revenue received from 1877 to the present time was $15,088.50, in 1877–78, under the act of 1877. In 1890–91, the first year after the amendment was enacted taxing the charters of foreign corporations according to their capital stock, the total revenue was $12,354.50. In 1896–97 the total revenue was $1,360.00. The aggregate revenue from this source for the twenty years immediately after 1877 was almost exactly $50,000.

3. In 1879[1] the secretary of the board of agriculture was instructed to collect samples of fertilizers sold in the state and to submit them to the College of Agriculture and of the Mechanic Arts for examination. If the results of such examination were found to be satisfactory, the state treasurer was authorized to issue a license, to be countersigned by the secretary of the board of agriculture, to the person or corporation manufacturing or importing such fertilizers. This license legalized the sale of the specified fertilizers, but each bag or barrel offered for sale must display a card giving a list of its constituent parts and the words "State of New Hampshire—Licensed." The fee for the license was $50, to be paid in to the treasury, and the term for which it was valid was one year. During the twenty years in which the

[1] Laws, 1879, p. 353.

sale of fertilizers has been taxed by the state the revenue to the state has approximated $12,500. During the first decade the revenue averaged about $500 per year; during the last decade, nearly $1000 per year.

4. The first act[1] on the statute books regulating the sale of lightning rods was evidently intended to be prohibitory. It dated from 1878 and allowed the state treasurer to grant a license for the sale of lightning rods for a term of one year to any applicant "if the treasurer shall be satisfied upon a scientific investigation, that such lightning rods are sufficient for security against lightning and that the applicant is a person of good moral character." The sum of $50 had to be paid in advance to defray the expenses of the investigation. The penalty for selling without a license was a fine not exceeding $1000, imprisonment in county jail not exceeding one year, or both. It is hardly necessary to state that no licenses were issued under the above law. The next year, 1879,[2] the law was amended by allowing the state treasurer upon the payment of $100 to grant a license for the sale of lightning rods to "any applicant who has for five years last past been a citizen of the state," provided that the result of the scientific examination were satisfactory and the applicant filed a bond with the required securities in the penal sum of $1000 to respond in damages resulting from misrepresentation or fraud. The constitutionality of the above amendment was questioned on the ground that it was in conflict with a provision of the constitution[3] of the United States. A case involving the validity of the law was brought before the supreme court of the state and the court held

[1] Laws, 1878, p. 179.
[2] Laws, 1879, p. 352.
[3] Art. 4, sec. 2.

the law invalid[1] for the reason given above. The total amount received for license fees under the amendment of 1879 was $500. This sum was refunded[2] by the legislature after the law was declared unconstitutional. The public statutes of 1891 retained all the existing provisions upon the subject of licenses for lightning rod venders except the provision declared invalid. In place of the fees imposed under the amendment of 1879 a uniform fee of $300 each was imposed upon all applicants who were able to file the $1000 bond required under the amendment of 1879. It does not appear that any revenue has as yet (1898) accrued to the state under the above provisions.

5. The practice of medicine and surgery was first regulated by state law in 1875.[3] At the general revision of the laws in 1878 the act was extended to include the practice of dentistry. All persons desiring to practice this profession who were not duly authorized to practice medicine or who had not secured a dental degree from some authorized institution or who had not practiced the profession continuously in the state since January 1, 1875, were required to pass an examination prepared by the New Hampshire Dental Society and to pay certain fees both to the society and to the clerk of the county court. In 1889 a case was brought before the supreme court which involved the validity of the statute on the ground that it discriminated between citizens of the state and those of other states. The court held the statute void and the decision resulted in the act of 1891, establishing a board of denistry, with authority to regulate the practice of the profession. This act provided that

[1] State *vs.* Wiggin, LXIV N. H. reports, p. 508.
[2] Laws, 1889, p. 126.
[3] Laws, 1875, p. 449.

every person engaged in the practice of dentistry in the state at the specified time, or who was a graduate of some college or institution authorized to give a dental degree, or who had been regularly licensed by the New Hampshire Dental Society should register with the said board. All others desiring to practice the profession were required to pass an examination before the board of dentistry. The fees established by this act were: for a certificate which was to be issued to all practioners, 50 cents; for a certificate of qualification after the examination, in case such certificate were granted, $5.00. The annual revenue from this source has been small, never having reached $100.

SEC. 7. *Indirect Taxes.* At the outbreak of the Revolution the excise taxes[1] then in force were continued without express enactment until April 9, 1777, when they were legalized by a specific legislative act.[2] By the act of December 26, 1778,[3] the excise tax was discontinued[4] until 1781, when the former policy was revived. The tax was uniform for all kinds of distilled liquors, and the rate was fixed at three pence per gallon for innkeepers and two pence per gallon for ordinary retailers. An account under oath to the proper officers was required at quarterly intervals. In case of refusal to take this oath at the request of the officers a fine of $10 was imposed "in full satisfaction of the quarterly excise". By an amendment of December 28, 1782,[5] the rates were doubled[6] and it was further required that the excise for each county should be sold annually "at pub-

[1] See chap. 3, sec. 3, p. 46.
[2] Perpetual laws, 1789, p. 160.
[3] Perpetual laws, 1789, p. 239.
[4] Perpetual laws, 1789, p. 145.
[5] Perpetual laws, 1789, p. 147.
[6] To counteract the depreciation of the paper currency.

lic vendue to the highest bidder".[1] This act was contined in force until 1787, when it was found that "the raising a larger revenue to this state by excise than hath heretofore been practiced and in a more general way appears very necessary." The act of 1787[2] increased the rates on distilled liquors[3] and included in the system an excise tax on clocks[4] and vehicles.[5] All retailers were required to take out a license, otherwise they were liable to a fine of 40 shillings for each offense, one-fourth going to the prosecutor and three-fourths to the state. All persons purchasing by wholesale (twenty-five gallons and upwards) of those who did not retail or pay excise were required to pay the regular excise to the farmer or collector. This act was continued in force until the United States government was established in 1789.

2. It was shown in a preceding section[6] that the policy of maintaining an "open port" was firmly established in New Hampshire as early as 1725. While a continuation of the traditional policy of the state was manifestly impossible after the outbreak of hostilities in 1775, and impracticable from the close of the war to the inauguration of the federal government under the constitution of 1787, the actual policy adopted by the state was, under the circumstances, singularly liberal. On the 27th of December, 1776, following the report of a committee of both houses for regulating trade, etc.,

[1] From 1777 to 1782 it seems to have been the custom to "farm out" the excise tax.

[2] Perpetual laws, 1789, p. 149.

[3] The rates for retailers varied from 4 *d.* per gallon on New England rum and other American distilled spirits to 1 *s.* 3 *d.* on Medeira wine; taverners paid one-fourth more.

[4] 30 *s.* on every imported clock.

[5] Coach or chariot, £ 6 per year; fall back chaise, 8 *s.*; other chaise, 6 *s.*, etc., etc.

[6] Chap. 3. sec. 4, pp. 49-64.

the legislature authorized a committee "to repair to the Massachusetts State and there consult with the committee there appointed to bring in a bill for the purpose of regulating trade, etc., and that they make it their business so to conduct matters that a general regulation may take place which may be suitable to the circumstances of the four New England States."[1] It does not appear that this effort to secure uniform trade regulations for New England was successful. Being unable to bring about any rules for the government of trade, New Hampshire for nearly a year, from December 10, 1776,[2] to November 22, 1777,[3] maintained a general embargo.[4] Even after the embargo was abandoned the state legislature exercised large powers over the movements of vessels entering the ports, especially in regard to the exportation of any provisions that might by any chance fall into the hands of the enemy. In general, however, the state maintained the former policy of unrestricted trade until 1784.

By act[5] of the 6th of April, 1781, the state granted to the congress of the United States the right to levy a duty of five per cent upon all goods, wares, and merchandise of foreign growths and manufactures, with certain specified exceptions, imported into the state after March 7, 1781, and a further duty of five per cent upon all prizes condemned in the maritime court of the state, provided that the legislatures of the other states would grant similar duties. The states failed to act, and consequently matters drifted from bad to worse. Again, on

[1] VIII N. H. Prov. papers, 441.

[2] VIII N. H. Prov. papers, 412.

[3] VIII N. H. Prov. papers, 718.

[4] War vessels excepted. Other vessels might be especially excepted by the proper authorities.

[5] XXI N. H. State papers, 869.

four different occasions during the years 1784–86[1] the state of New Hampshire, in accordance with the recommendation of the congress of the United States of April 30, 1784, authorized that body to "enter into treaties of commerce and provide for a due regulation of trade throughout the United States of America," to take effect whenever the other states[2] sanctioned such action on the part of congress. No such general action was secured, however, until the adoption of the Constitution in 1787.

Accordingly the legislature on the 17th of April, 1784,[3] passed an "Act for laying an impost duty on sundry goods imported into this state." The duty was fixed at five per cent upon nails, looking-glasses, China ware, glassware, earthenware and stoneware, and at two and one-half per cent upon all other goods. Hemp, salt, and such articles as were manufactured or grown in the United States of America were exempted. The commercial interests of New Hampshire were at this date too important to submit to a policy of commercial isolation without a struggle. The merchants of Portsmouth were again the leaders in a movement for "free trade". On the 15th of February, 1785, a "petition and memorial of a number of merchants, traders and other inhabitants of the town of Portsmouth"[4] was presented to the legislature with the result that a joint committee was appointed to "confer with the legislature of the commonwealth of Massachusetts, with respect to the trade and commerce carried on between the subjects of the said commonwealth and those of this state," urging

[1] XXI N. H. State papers, 870–3.

[2] See Fiske, Critical period of American history, pp. 142-147, for a brief account.

[3] Laws, 1780, p. 367.

[4] XX N. H. State papers, 197.

the necessity of peace and harmony among the whole, and that, "that commonwealth's laying duties on goods, wares and merchandizes belonging to subjects of this state will have a manifest tendency to disunite them."[1] The instructions for the guidance of the committee stated that "the commercial interests of the commonwealth of Massachusetts and those of this state are so reciprocal and interwoven with each other that it is necessary some laws and regulations should be adopted that may be of mutual benefit and advantage in regulating trade as well by sea as by land, and that such impost acts as have been passed in either or both of said states, to the prejudice of trade or the revenue of either state, or the subjects thereof, be revised and put on a fair and equitable basis for both." In furthering these plans the committee was instructed to "propose and consult on such laws and regulations as shall be judged necessary and convenient for the reciprocal and mutual advantage of each state; and . . . endeavor to obtain a repeal of all such laws and regulations of trade as may be injurious and inequitable to either state or subjects thereof, or in any way embarrass a free and open trade between each other."[2] It was not until October 21, 1785,[3] that the committee was finally appointed and fully prepared to enter on its work. Although it appears that before the New Hampshire committee was ready to proceed on their mission Massachusetts had authorized a similar one, the legislative records of the state are silent regarding the work of the two committees.

From 1786 until 1790, when the revenue laws of the

[1] XX N. H. State papers, 197–8.
[2] XX N. H. State papers, 215.
[3] XX N. H. State papers, 416.

national government took effect, the state, finding her efforts unavailing to coöperate, either with the nation or with Massachusetts for a uniform regulation of commerce, pursued a more independent course. On March 4, 1786, "an act to establish certain impost duties on various articles imported into this state"[1] stated that the "laying duties on articles of the produce and manufactures of foreign countries, will not only produce a considerable revenue to the state, but will encourage the manufacturing of many of those articles in the same." It was thereupon enacted

That from and after the first day of May next, there shall be an impost duty of 15 per centum *ad valorem* upon all jewels, wrought gold and silver, brocades or cloth of gold and silver, gold and silver lace, silk stockings, silk stuffs, silk thread and woolen gloves, shoes and boots, buckles, pewter spoons, silk, hair and basket buttons, beaver, felt and castor hats, saddles and bridles, horse harness, ready made beds and furniture, painted paper, playing cards, chess-men, all wrought iron excepting artificers tools, all wrought brass excepting warming pans, all wrought mahogany, nails, bellows, all glass excepting window glass, cheese, loaf sugar and linseed oil; also upon all ready made carriages, clocks, clock cases, and watches that may be imported into this state either by land or water: and an impost duty of 10 per centum *ad valorem* upon all china, earthen and stonewares, that may be imported as aforesaid and also an impost duty of 5 per centum *ad valorem* upon all wines, beer, porter and ale, that may be imported as aforesaid; and a duty of three shillings per barrel, on all pitch, tar, and turpentine imported as aforesaid; and also a duty of 2½ per centum *ad valorem* upon all goods, wares and merchandize, that may be imported as aforesaid.

These duties might either be paid in money or secured by bond, with sufficient securities, to be paid in three months, after which date interest was charged. In case of disagreement as to the value of the goods the impost officer and importer were authorized jointly to select two or more reputable citizens to appraise such goods on oath. In case the importer and impost officer could not

[1] Perpetual laws, 1789, p. 152.

agree upon the persons, the officer was directed to apply to any justice of the peace for the county, who was then authorized to appoint two or more discreet persons whose appraisal under oath was to be deemed the just value of the goods in question. Both the master of any vessel bringing by sea goods liable to duty and "every waggoner, team driver, carman or other person" importing goods by land exceeding three pounds in value at any one time were required to make certain reports and properly to secure the payment of the duty, or be liable to penalties of £20 and £10 respectively and also to forfeiture of the goods. The impost officers were required "to file a libel" before any justice of the superior court of judicature whenever any goods were seized under this act, and the same court was given full jurisdiction over all cases arising under the law. Perishable goods seized under this law might be sold before the trial occurred. Glass, cast iron, and wrought iron were subject to a duty of two and one-half per cent until January 1, 1787, after which date they paid full rates. A significant clause appeared in a provision "that this act shall not be construed to extend to any rum brought into this state, being the manufacture of any of the United States, or to the article of salt, or the necessary household furniture of any person coming into this state or to any of the articles aforesaid, being the manufacture of any of the United States." This act, by its terms, was "to continue and be in force for the term of two years and to the then next session of the general court."

This important act was modified by two statutes: (1) An act passed June 23, 1786,[1] provided that certain articles used in manufacturing might be imported, by

[1] Perpetual laws, 1789, p. 197.

land or by sea, by any person, native or foreigner, duty free. The articles thus exempted were "spanish and cotton wool, molasses, raw silk, elephants' teeth, untanned hides, unwrought copper, brass, and steel, pig iron, goat's hair, camel's hair, fuller's earth, drugs and wood used in dyeing, tin plates, brass and iron wire, and all tools and implements used by artificers." (2) A second modifying act, entitled "an act to encourage the importation of coined gold and silver," was passed June 24, 1786.[1] Although this law failed to relieve the momentary distress owing to the operations of the so-called tender act,[2] it increased the stock of hoarded gold and silver and admitted goods free of duty that otherwise would have either paid a duty or sought other markets. The act provided that every vessel owned by inhabitants of the state should be free from all duties except light money if it brought gold and silver only, and from one-half the duties if it brought a sum of money equal to half its cargo, and so in proportion.[3]

[1] Perpetual laws, 1789, p. 198.

[2] II Belknap, N. H., p. 466. Barstow, N. H., p. 270.

[3] The impost act of March 4, 1786, was again amended on June 27, 1787. Perpetual laws, 1789, p. 149. The object of this amendment was to "impower the impost officer to enfore the collection of the revenue" arising under the act. It provided: (1) that the impost officer or his deputy might enter on board any vessel and remain there until the time for making the report, and examine and condemn any part of the cargo (See remonstrance, XXI N. H. State papers, 75) if it did not compare with the report; (2) that all bonds should be discharged in silver or gold, any tender act to the contrary notwithstanding; (3) that the state treasurer should issue extents if the bonds for the payment of the impost were not paid when due; (4) that the impost officers should give bond in the sum of £3000 for the payment of the impost revenue to the state treasurer quarterly, and that in case of failure extents might be issued against the impost officers; and (5) that no drawback should be allowed on account of the importation of gold and silver unless the captain could satisfy the impost officer that the gold and silver was "on board the vessel when he sailed from some foreign port."

On June 13, 1788,[1] the general court passed an act continuing the act of March 4, 1786, "so far as the same is consistent with the other impost acts now in force," for two years, affirming that "the same has been found very beneficial." Upon the assumption of the state debts by the federal government, the latter took formal control of the impost and excise in accordance with the provisions of the federal constitution. It was not till January 16, 1790, however, that the legislature of the state could affirm that "by the operation of the Federal Government the collection of duties and tonnage at the impost and naval office have ceased."[2]

3. In a letter to Colonel M. Weare, president of the council, dated June 10, 1782, Eleazer Russell, collector of the port of Portsmouth, stated,[3] "when the naval office was first ordered by a resolve of the General Court, early in the year 1776[4] no fees were mentioned, and I was advised by the State Committee to make out a list for the several papers to be used that was moderate, which I did, and first shew it to the merchants there in trade who thought it full low—it afterwards had the Saction of the Hon^ble^ Committee of the state. When the office was established by law, on November 26, 1778,[5] this list was before the Hon^ble^ General Court, and on account of the depreciation they were pleased to order three for one. When paper money ceased to circulate (1780) I knew not what to do. To reduce the law fees by the scale of depreciation[6] brot them very low and produced fractions that I could never make even

[1] Perpetual laws, 1789, p. 159.
[2] XXI N. H. State papers, p. 711.
[3] XVIII N. H. State papers, pp. 716–8.
[4] VIII N. H. Prov. papers, p. 194.
[5] N. H. Laws, 1780, p. 132.
[6] Passed September 1, 1781. Perpetual laws, 1789, p. 185.

change. Therefore, I recurd to the original list[1] and it has since been my rule."

4. A resolution of the general court, November 27, 1777,[2] directing the naval officer for the port of Pascataqua (Portsmouth) "to collect and receive for the use of this state all the powder and powder money that shall come due to this state from foreign vessels entering the port . . . . according to the laws of this state and pay the same in to the treasury every three months," indicates that as soon as the embargo act was repealed the laws relating to powder money in force previous to the outbreak of the Revolution were made operative. By "an act to alter and extend the act about powder money," passed April 16, 1784,[3] the former act was amended in two particulars: (1) it was extended "to comprehend all vessels not belonging to any subject or subjects of the United States," and (2) it was provided that in future every ship or vessel liable to pay the powder money duty should pay "two shillings per ton in money and not in powder." The revenue derived from powder money and port fees

[1] XVIII N. H. State papers, p. 684, gives the following list:—

NAVAL OFFICE, New Hampshire, 1776.

For entering every ship and vessel from Massachusetts Coastways	0,,	3,,	0
For clearing to ditto	0,,	3,,	0
For entering from any other of the American States	0,,	6,,	0
For clearing to ditto	0,,	6,,	0
For entering every ship, or vessel from a foreign voyage	0,,	12,,	0
For clearing to ditto	0,,	12,,	0
For every Register	0,,	12,,	0
For recording every Register	0,,	2,,	0
For endorsing every Register	0,,	2,,	0
For every Bond	0,,	2,,	0
For a bill of health	0,,	3,,	0
For a Coket	0,,	2,,	0
For a permit to unload	0,,	1,,	0
For every pass for the Forts	0,,	2,,	0 "

[2] VIII N. H. Prov. papers, p. 721.

[3] Perpetual laws, 1789, p. 159.

seems to have been barely sufficient to provide a harbor light and a small garrison at the port. An act of 1787, appropriating certain revenues from impost, excise, etc., provided "that the revenue annually received by the naval officer shall be and hereby is appropriated to the support of the garrison and maintenance of the light at the castle William and Mary, and the deficiency, should any happen, shall be made up out of the specie taxes due to the state: and the surplus of said revenue, if any there be, shall be and hereby is appropriated to the payment of orders drawn or that may be drawn on the treasury."[1]

SEC. 8. *The Present Revenue.* The following statement, taken from the reports of the state treasurer, exhibits the chief sources of the state revenue for the fiscal years 1886–87 and 1896–97 :—

	1886–7	1896–7
State tax	$400,000 00	$500,000 00
Railroad tax[2]	101,191 22	133,045 66
Insurance tax	6,563 32	26,195 66
Interest on deposits	1,416 81	1,994 60
License fees (peddlers)	190 00	2,550 00
License fees (fertilizers)	550 00	1,100 00
Telegraph tax	5,806 73	3,190 40
Telephone tax	195 65	3,129 60
Charter fees		1,360 00
Fees (Insurance Department)		9,832 05

[1] Perpetual laws, 1789, pp. 157–8.

[2] The share of the state in the tax on railroad corporations is somewhat less than one-half. In 1886-7 the total revenue from the railroad tax was $208,182.72.

CHAPTER VII.

THE ADMINISTRATION OF STATE TAXES.

SEC. 1. *Assessment.* The act of July 2, 1776,[1] provided that "public rates and taxes shall be made and assessed in proportion to each persons poll, ratable estate and faculty." It did not definitely state that the selectmen should make the assessment, but it assumed such action in a provision requiring that the "Selectmen shall annually take an invoice of each persons poll and estate." However, the act of February 8, 1791, the basis of the succeeding system, enacted

> That the selectmen of the several towns in this state be, and they hereby are authorized, empowered and required seasonably in every year to assess the polls and estates within such towns according to the rules and directions of the law, their just and equal proportion of all sums of money granted by the general court for which they shall have warrant under the hand and seal of the treasurer of the state for the time being, and their proportion of all sums of money voted and agreed to be raised by the justices of the court of general sessions of the peace in the same county for which they shall have a warrant under a hand and seal of the treasurer of the same county; and all such sums of money as shall be voted to be raised at any legal meeting of the inhabitants of their town; and they shall also assess the polls and estates within such town all such sums of money as they may by any law of this state be authorized and empowered to assess.[2]

They were also authorized to "assess a sum, over and above the sum required to be raised, not exceeding one shilling on every pound," to answer any abatement that might be necessary. In case the selectmen neglected to make the assessment according to the terms of the state treasurer's warrant, the latter officer was directed, as in the case of negligent collectors, to issue his extents against such selectmen. When an execution had been issued and neither the estate nor the persons of the se-

[1] Laws, 1815, I App., 511.

[2] Revised laws, 1797, p. 196.

lectmen could be found, the inhabitants of the town were made liable for the amount of the taxes due from the town. By an act of the same date, February 8, 1791,[1] regulating towns and town officers, it was enacted that "any town may choose assessors who shall have the qualifications of selectmen and shall have all the powers of selectmen so far as relates to assessing taxes." It does not appear from the phraseology of the law whether the assessors, when chosen, were to act alone and to assume a part of the usual duties of the selectmen, or to act with the selectmen as a joint board. The act of December 28, 1791,[2] stated that "the selectmen and assessors may assess," but a later act, December 19, 1816,[3] spoke of "the assessors or selectmen acting as assessors." Any uncertainty upon this point was removed on June 26, 1823,[4] by the enactment that "assessors when chosen are to be a joint board with the selectmen for the assessment of taxes."

Since 1823 the law relating to assessments has been slightly modified as occasion has demanded, but in substance it remains to-day as handed down by the Revolutionary government from provincial times. Two important changes in the law have been necessitated by the direct taxation of certain corporations by the state and by the rise and development of the cities. (1) From 1842 until 1878 taxes laid upon railroad corporations were assessed by the justices of the supreme court,[5] from 1878 to the present time by the state board of equalization.[6]

[1] Revised laws, 1797, p. 180.

[2] Laws, 1815, I App., p. 541.

[3] Laws, 1816, p. 78.

[4] Laws, 1823, p. 69.

[5] Revised statutes, chap. 39, sec. 4; Compiled statutes, chap. 41, sec. 4; General statutes, chap. 54, sec. 2.

[6] General laws, chap. 62, sec. 2; Public statutes, chap. 64, sec. 4.

The state board of equalization has also assessed the taxes upon the telegraph and telephone companies since such taxes were placed under the control of the state authorities in 1878 and in 1883 respectively.[1] Since the state tax upon the deposits in savings banks has been controlled directly by the state (1864)[2] it has been assessed by the state treasurer. The latter officer's duties, however, are merely ministerial, the rate of taxation being fixed by the legislature, and the method of securing the amount of the deposits leaving little to the discretion of the state treasurer. Since 1889[3] the assessment of taxes upon trust companies and similar organizations has been made under the same law as that upon savings bank deposits. (2) The act of 1846, now in force so far as it relates to cities, enacted that "all cities, now or hereafter incorporated shall have, exercise and enjoy all the rights, immunities and privileges and shall be subject to all the duties incumbent upon or appertaining to the town corporations to which they succeed."[4] This act also provided for the election or appointment of assessors "who shall perform all the duties relative to the taking of the inventory and the appraisal of property for taxation and in regard to the assessment and abatement of taxes . . . . as are now and may be hereafter required by law of selectmen and assessors of towns" and who should be subject to the same liabilities and possess like powers.

[1] In the assessment of the tax upon the railroad corporations the selectmen and assessors have since 1860 been required to assist by taking an inventory of the number of shares owned by the several inhabitants of each town, and returning the same to the state treasurer annually by June first.

[2] Laws, 1864, chap. 4028, sec. 1.

[3] Laws, 1889, chap. 12, sec. 1; chap. 55, sec. 1.

[4] Laws, 1846, chap. 384, sec. 1.

SEC. 2. *Equalization.* Equality of burden in public taxation is required by the provisions of the state constitution. According to the Bill of Rights "every member of the community has a right to be protected by it in the enjoyment of his life, liberty and property; he is therefore bound to contribute his share to the expense of such protection."[1] To carry this provision into effect the legislature is authorized by the constitution "to impose and levy proportional and reasonable assessments, rates and taxes upon all the inhabitants and residents within the said state, and upon all estates within the same."[2] A further provision requires, "in order that such assessments may be made with equality," that "there shall be a valuation of the estates within the state taken anew once in every five years, at least, and as much oftener as the general court shall order."[3] In general, two methods have been employed to give effect to the plain requirements of the constitution: (1) equalization through the apportionment committee of the house of representatives, and (2) equalization through the state board of equalization.

1. From 1775 until the notable revision of the tax laws in 1878, equalization among the towns and counties in the state was the work of the apportionment committee of the house of representatives in establishing a new proportion of the state tax once in four or five years.[4] Whenever a new proportion was ordered, the legislature called upon the selectmen and assessors to make a return of the inventory of the previous April, showing

[1] Bill of Rights, art. 12; constitution of 1784; repeated in constitu- of 1792; Perpetual laws, 1789.

[2] Const. of N. H., part II, art. 5.

[3] Const. of N. H., 1784, 1792, part II, art. 6.

[4] 1775–1808, once in five years; 1808–1900, once in four years.

the total amount of the taxable property in the several towns. These returns were referred to the apportionment committee of the house of representatives, which did little, if anything, to remedy the glaring inequalities that appeared on their face.[1] The proportional part of each town and of each county in one thousand dollars of the state tax was then calculated, and from this proportion, when a state tax was voted, each town knew at once its share. To a considerable extent before 1833, and almost wholly after that date, when all property instead of being rated was made appraisable by the selectmen and assessors, each town's proportion of the tax depended upon the scale of valuation adopted by the local officers in making the annual inventory. Thus there was a very strong temptation to appraise the property low, so that the town's proportional part of the county and state tax would be lessened.[2] An act of July 10, 1874,[3] attempted to equalize the appraisal of property for the assessment of taxes by providing for a special invoice of the real estate in September of every fourth year. Every invoice was to be returned under oath stating "that we . . . . . appraised all taxable property at its full value and as we would appraise the same in the payment of a just debt due from a solvent debtor."[4] In 1876[5] this act was amended by requiring an annual invoice in April with a new appraisal of "all such real estate as has changed in value in the year next preceding," and a correction

[1] See N. H. House and senate journals, 1844, '48, '52, '56, '60, for facts as shown in returns.

[2] General statutes, 1867, chap. 60; Laws, 1868, chaps. 22 and 58.

[3] Laws, 1874, p. 345.

[4] The penalty for the violation of the act was a fine of from $100 to $500, or imprisonment of from three to twelve months, or both.

[5] Laws, 1876, p. 576.

of all such errors as were found in the existing appraisal. This system of equalization not only was "loose and inefficient", but also necessitated imposing upon the justices of the supreme court the equalization of the railroad tax, an executive duty which in effect prevented that body from sitting as a court of appeal in cases relating to the valuation of railroad property.

2. The tax commission of 1878 stated that as a result of its inquiry into the tax system of the state it had become thoroughly convinced "that a state board for the equalization of values is a pressing need of the state," [1] and that "if the new sources of revenue recommended by the commission are adopted, a Board of Equalization will be a necessity." [2] The act of August 17, 1878,[3] providing for a state board of equalization, required that it consist of five members, to be nominated and appointed by the supreme court [4] and commissioned by the governor for a term of two years. The duties imposed upon the board of equalization by the statute were "to assess the taxes upon the several railroads within the state, to perform the duties now devolving upon the apportionment committee of the house of representatives and to perform such other duties as may from time to time be imposed upon them by the State legislature." [5] This act constituted the county commissioners in each

[1] Report of the tax commission, 1878, p. 39.

[2] The "new sources of revenue" were adopted in the main, and also the tax commission's recommendation for a state board of equalization.

[3] Laws, 1878, p. 199.

[4] The tax commissioners of 1878, "guided," they said, "somewhat by the almost uniform concurrence in practice in other states," suggested as the personnel of the board the state treasurer, the attorney general, the secretary of state, "and a representative of each of the leading political parties to be appointed by the Governor and council." Report, 1878, p. 39.

[5] Laws, 1878, p. 199.

county local boards of equalization, and the state board of equalization a supreme board of equalization as between counties. The selectmen were required to return inventories to the secretary of state annually, and to the county commissioners once in every four years; the county commissioners were "to visit every town in their county and personally inspect so much of the real and personal estate in said towns" as they deemed necessary to equalize the valuation. After this equalization the chairmen [1] of the several boards of county commissioners were directed to meet with the state board of equalization on a specified date and together with them were made a joint board for "equalizing the apportionment to the different counties so that each county shall pay its just proportion of the state tax." [2] The act definitely stated that "the state board of equalization, together with the county commissioners, as aforesaid, shall have a general supervision of the subject of taxation in the state, as far as it relates to the inventories and the appraisal of the selectmen and assessors in the various cities, towns, and places in the state." [3] The board was required to examine the inventories once in four years, and "if after such examination, such assessments shall be determined relatively unequal, they shall equalize the same by adding or deducting from the aggregate valuation of taxable real and personal estate in such town or towns, such percentage as will produce relative equal and uniform valuation between the several cities and towns in the state." [4] The supreme court of the state was made a

[1] Or any member designated by the board.
[2] Laws, 1878, chap. 73, sec. 4.
[3] Laws, 1878, chap. 73, sec. 6.
[4] Laws, 1878, chap. 73, sec. 7.

final court of appeal from all decisions of the board of equalization.

The act of 1878, constituting a state board of equalization, has been materially modified only by the statutes as revised in 1891.[1] This revision in effect repealed the clauses making the county commissioners through their representatives a joint board with the state board of equalization for the general oversight of taxation. The county commissioners[2] are required to visit the towns and personally inspect the property and "decide whether said property is appraised higher or lower than its true value." But instead of being required to act with the state board of equalization, the representatives of the county commissioners are simply "to give to the board the results of their inspection and all other information upon the subject within their possession." Such was the relation of the local officers to the board recommended by the tax commissioners of 1878. Such is their natural relation.

SEC. 3. *Abatement.* Abatement of taxes may be secured in any one of three ways: (1) By action of the selectmen. The act of February 8, 1791,[3] empowered the selectmen "to abate any taxes assessed either by themselves or by their predecessors upon sufficient reason being shown." This has since continued to be the law of the state.[4] (2) By action of the courts of law. In some cases the supreme court is by law definitely stated to have the power to abate taxes assessed by certain

[1] By act of 1885, chap. 40, sec. 1, the secretary of the board was voted an annual salary of $600. By act of 1878, chap. 62, sec. 15, telegraph lines, and by act of 1883, chap. 110, sec. 2, telephone lines as well, were made assessable by the state board of equalization.

[2] Public statutes, p. 107.

[3] Revised laws, 1792, p. 185.

[4] Public statutes, 1891, chap. 59, sec. 10.

authorities.[1] The supreme court may hear all cases in which the question is one relating to the constitutionality of the tax or of the statutes under which the tax was assessed;[2] and the court may abate the tax if it finds that the tax is "unequal", "unreasonable", or is assessed upon property legally exempted. (3) By action of the legislature. The legislature has always exercised the right of abating taxes whenever it has been shown that good reason existed for such action. Such action more often has been directed toward the relief of towns,[3] but not infrequently toward the relief of railroads[4] and of other corporations.[5]

SEC. 4. *Collection.* The system of taxation established in the eighteenth century by the important act of 1719[6] was continued in force by the Revolutionary government in 1776,[7] and has been maintained in its essential features throughout the nineteenth century. It will be necessary, therefore, to treat here only the more important amendments. These amendments may be grouped for convenience into three classes: (1) those granting to the administrative officers more extensive powers over the collection of taxes, (2) those extending the system of collection to include taxes on corporate property, and (3) those putting a premium upon punctuality in the payment of taxes.

[1] Laws, 1895, p. 448 *et seq.*

[2] 60 N. H. Reports, p. 219 *et seq.*

[3] Laws, 1877, p. 16.

[4] Laws, 1867, p. 17; 1863, p. 2723.

[5] Laws, 1878, chaps. 84 and 86.

[6] Chap. IV, pps. 81–82.

[7] The act declared all previous assessments "good and legal", and provided that all officers "take, use and pursue the same method for the collecting and levying of any such taxes or any other taxes that may be legally assessed in the future as the laws of the colony provide and direct for the collecting and levying of the taxes within the same." Laws, 1815, II, p. 16.

1. The amendments of the first class, falling within the years 1781–1821, constituted, in fact, a series of supplementary acts having for their object the better enforcement of the existing laws. An amendment of 1781[1] stated that "some towns and places in the state liable by law to pay taxes have through meanness or avarice refused and neglected and may hereafter refuse and neglect to choose the proper officers for assessing and levying taxes in the expectation of thereby eluding the payment of their proportion of the public taxes." In such cases the treasurer of the state was directed to issue "executions or warrants of distress" against any two or more inhabitants. These warrants were issued to the sheriff of the county, who was directed to sell the goods or estates in question and to return the proceeds to the state treasurer. The inhabitants whose property had thus been seized were given the right to recover by a suit at law such amounts, with costs, damages, etc., from the other inhabitants of the town. A second amendment of 1789[2] provided for the sale of real estate[3] whenever personal property was lacking, or whenever the owner "absconded or secreted himself so that his body cannot be arrested." Still a third amendment, dated June 10, 1821, authorized the selectmen to appoint collectors whenever a town refused or neglected to do so. In such cases the selectmen were required to take bonds and make written contracts with such collectors.

2. The second class of amendments, falling within the years 1821–41, were designed to place corporations

[1] Perpetual laws, 1789, p. 219.

[2] Perpetual laws, 1789, p. 183.

[3] The provisions of this amendment were made still more specific by an act of 1827.

as well as individuals under the laws relating to collection. An act of 1827[1] made all the provisions of the law relating to the duties and powers of collectors apply to corporations as well as to individuals. The act of 1827 was followed by four others, each dealing with some specific point: (1) an act of 1832 provided that a written notice must be given to a proper officer of a corporation, if any such officer lived in the state, before distraining for taxes; (2) the same act provided that in case of bridge, canal, and similar incorporated companies the franchise and the right to take toll might be sold for taxes due, the usual notice having been given; (3) an act of 1838[2] provided that if corporate taxes were not paid within three months from April 1st, and no personal property was pointed out whereon to make distress, then the lands or other real estate might be taken for the taxes; (4) the act of 1838 was supplemented by one of three years later[3] definitely stating that the personal property of corporations as well as that of individuals was liable to be taken by distress for taxes overdue.

3. The third class of amendments, falling within the years 1834–1867, in general all aimed to secure the prompt payment of taxes, either by allowing a discount for early payment or by charging interest after a certain date. The first act of this nature, passed in 1834, allowed any town by vote to grant a discount[4] to persons paying their taxes before a specified date. No further steps were taken in this direction until 1860,[5] when any

[1] Laws, 1827, chap. 62.

[2] Laws, 1838, p. 350.

[3] Laws, 1841, p. 357.

[4] In 1824 a special act allowed certain towns to grant an abatement for taxes paid in 30, 60, and 120 days, and to distrain for overdue taxes after 120 days. Other towns might adopt such parts of this act as they chose.

[5] Laws, 1860, p. 2271.

town by a vote of a majority of the legal voters in a meeting called for the purpose, or any city by a vote of the city council, was authorized to determine the time after which all taxes assessed upon real and personal property should be charged six per cent interest, to be collected as other taxes. When this clause as modified in the general statutes of 1867[1] appeared, the statement was definite that "interest at the rate of ten per cent shall be charged upon all taxes not paid on or before the first day of November[2] after their assessment, from that date, which shall be collected with said taxes as incident thereto."

The system is based upon the ultimate responsibility of the property of the individual, which has been effected by the following means: (1) The property and person of the collector is first made responsible by definite provision for seizure and sale of his property through extents issued by the several treasurers, and by further provisions for the imprisonment of the collector, whenever occasion demands such action. (2) In case the above means fail to find property to satisfy the tax, the property of the selectmen is made liable for the amount due; in this case the selectmen have a remedy against the inhabitants for a like sum. (3) In case of the failure of both the above methods, the treasurer may issue extents directly against the property of individuals, who in turn have remedy against all the other inhabitants of the town. Thus the ultimate responsibility is fixed upon the property of the individuals. In cases where either the town fails to appoint the proper officers, or the selectmen fail to appoint the collectors when the town neglects to do so, the extents must first be directed

[1] General statutes, 1867, p. 123.

[2] By act of 1872 the date was changed to December 1. Laws, 1872, p. 38.

against the property of the authorities failing to do their duty. All the above methods of fixing responsibility were established during the eighteenth century.

The assessment of a general land tax in 1777[1] on all lands and buildings not classed as "improved"[2] made necessary some provision for the collection of the tax. It was stated that "great parts of said lands may be owned by persons unknown or not inhabiting the towns where the lands lye, and have no personal estate whereon distress can be made," and therefore some "equitable" method of collecting the taxes must be devised. Two methods were provided, the first in 1777, and the second one year later, 1778. In the first method the entire work of collection was entrusted to local collectors. They were required to advertise the taxes successively for three weeks in the *New Hampshire Gazette*. In case the taxes remained unpaid at the end of eight weeks, the collector was required to advertise for sale and to sell at public auction so much of the lands as was necessary to pay the taxes and charges, and was given authority to execute a valid deed to the purchaser.[3] After six months' trial the above method was found to cause the non-resident proprietors "vast trouble and expense",[4] owing to the difficulty they experienced in finding the collector authorized to receive the taxes, and to the "exorbitant charges which such constable or collector has been wont to add thereto." The act of 1778, therefore, created a state officer to stand between

[1] Revised laws, 1805, p. 422.

[2] It will be remembered that the representatives made several attempts in 1756–7 to secure such a tax, but failed on account of the opposition of the council.

[3] Those in military service or in captivity were granted three months for redemption after they were at liberty from service or captivity.

[4] Preamble to act of May 23, 1778, amended December 26, 1778. Laws, 1780, p. 140.

the non-resident proprietors and the collectors. This officer was called the receiver[1] of non-resident taxes, and was authorized to receive all the taxes of non-resident proprietors on lands within the state. The collectors were required to forward without delay the lists of the non-resident taxes for their respective towns to the receiver, who was directed immediately to advertise the list in one of the New Hampshire gazettes for three successive weeks. All taxes unpaid at the end of eight weeks were returned to the collectors, who were then to advertise and sell the lands as under the act of 1777. A subsequent amendment of the same year provided for a more general advertisement both by the receiver and by the tax collector, and required that no more of the lands should be sold than was sufficient to pay the taxes and charges.

By act of 1874[2] the office of receiver of non-resident taxes was abolished and the entire work of collection entrusted to the local officers. By the terms of the act each collector was required to send a bill of taxes due to all non-resident taxpayers whose addresses were known, and to advertise in specified newspapers before January 1 following all property on which the taxes had not been paid. The cost of collection of non-resident taxes in all cases was borne by the taxpayers. In 1777 the amount was left to the discretion of the collectors, whose charges were described as "exorbitant". The act of 1778 fixed the allowance for collection and charges at the uniform rate of five per cent. The rate was doubled in 1796, and has since remained at ten per cent. A gen-

[1] In 1796 this office was abolished, and its duties transferred to the deputy secretary of state.

[2] Laws, 1874, p. 352.

eral right of redemption[1] for a limited time has been granted since 1780. At that time the limit was fixed at two months. This limit was extended to six months in 1784, to one year in 1787, and to two years in 1891.

The acts relating to the collection of taxes in unincorporated places fall into two classes: (1) those clothing the inhabitants of such places with the power to choose the necessary officers and to grant such officers the authority to collect such taxes, and (2) those granting to either the county or the state officers the right to make the collection whenever the places failed to do so themselves.

1. An act for making and establishing a new proportion of the province tax in 1773 stated that "sundry places which are not incorporated . . . . have no method to assess the sums to be raised." Accordingly certain men were appointed to call meetings of the inhabitants of such unincorporated places "to choose the necessary officers[2] for assessing and collecting the sums apportioned and set to their respective names." This act and others of temporary nature like it were superseded by the permanent act of 1791 "regulating towns" etc. The act of 1791 provided that whenever any unincorporated places were proportioned to any public tax, such places should enjoy the same powers as towns possessed, so far as was necessary to assess and collect such

[1] During the Revolutionary War the right of redemption was granted to those in service in the war or in captivity until some months after they were at liberty. Some other special privileges have been granted: *e.g.*, in 1851 purchasers of property might pay the taxes, and such sums must be repaid in order to redeem; in 1887 those holding a mortgage on property were allowed to pay the tax and then to hold the property under certain conditions.

[2] The officers were subjected to the same penalties as the like officers in incorporated places.

tax. In case they refused to do so they were made liable to the same process as were the inhabitants of incorporated towns refusing or neglecting to collect the tax.

2. After a comparatively short trial it was found that unincorporated towns "through meanness or avarice" often refused or neglected to choose the proper officers "in the expectation of thereby eluding their proportion of the public taxes." This state of affairs led to the adoption of a second method for the collection of taxes in unincorporated places through state and county officers. By an act of 1780[1] the treasurer of the state was authorized to give public notice of the lump sum proportioned to the lands in unincorporated places, and in case the taxes were not paid on a specified date to sell so much of the lands in question as was necessary to pay the taxes together with the incidental charges. This method was continued in use until 1831, when the act now in force was substituted. By the act of 1831[2] it was enacted that in case "any taxes are or shall be proportioned to any place unincorporated having so few inhabitants as to be incapable of choosing town officers, the treasurer of the state shall assess the proportion of such place and commit the same to the sheriff of the county where the said place lies, with a warrant under his hand and seal empowering said sheriff to collect the same." The sheriffs were given the same powers and put under the same limitations as were the collectors in the collection of the non-resident taxes. If the treasurer failed to receive notice of the appointment of a local collector by December 31st of any year he was to proceed to assess and collect the tax by the above method. The tax was

[1] Revised laws, 1805, p. 428.

[2] Laws, 1831, p. 26.

to be assessed in one sum unless the treasurer received notice from the clerk of the proprietors by the above date, certifying the shares belonging to the several proprietors. The law was recast in 1842, and reaffirmed in the general revisions of 1853, 1867, 1878, and 1891 without essential change.

CHAPTER VIII.

LOCAL TAXATION BEFORE 1680.

SEC. 1. *Relation to the Massachusetts System.* In 1641, when the New Hampshire towns, Dover and Portsmouth, having formally applied by their deputies for admission, were received into the Massachusetts Bay Colony, they pledged themselves to be governed wholly by the said colony, and secured the conditions that they were "to be subject to pay in church and commonwealth as the said inhabitants of the Massachusetts Bay do and no others."[1] In the practical application of the principles worked out in the two provinces while united under a common government we may expect to find certain variations, not only between the two provinces, but also even among the New Hampshire towns. Such differences seem to have been due to the unlike industrial and social conditions of the two colonies.

SEC. 2. *The Parish Taxes.* When the parish coincided with the town there was usually no legal differentiation of the two units; when, on account of the size of the town, church congregations settled in several localities within the town bounds the organization of their communities into parishes with the legal power of taxation for the support of the ministry was the usual result. As the towns grew in population there came a further differentiation resulting in the formation of church societies of differing creeds within the same territorial limits. Parish taxation illustrates the method of taxation for religious worship in its simplicity. During the early days of the settlement the church was undoubtedly

[1] I N. H. Prov. papers, 156.

supported by voluntary gifts under the pressure of a strong popular opinion.[1] As early as 1633 a pastor was established over the Dover parish, but he was obliged to seek other fields within two years owing to the fact that under the system of voluntary contributions the parish failed to provide for his financial support.[2] This system had proved inadequate in Exeter by the middle of the century, for in 1650 the townsmen were empowered at a meeting of the inhabitants "to make a rate upon such inhabitants of the town as do not voluntarily bring in according to their abilities"[3] to pay their minister's salary. Later, when Rev. Mr. Moody was settled at Portsmouth in 1658, it was stated that he was at first supported by subscriptions, "86 persons having subscribed for the purpose."[4]

With the advent of taxation for ecclesiastical purposes, an effort was made to avoid the more direct forms. Thus in Exeter in 1650 the tax was laid upon the most important industry. It was agreed by the town officers and leading citizens that every inhabitant of the town should pay two shillings for the maintenance of the ministry for every thousand of pipe staves he made. A proportional tax was laid upon other sizes of staves and also upon the prepared "bolts" of which the staves were made. If one sold his products before satisfying the town the penalty was a five fold fine.[5] Perhaps a more common form of taxation for the support of the church was a tax on the sawmills. This tax probably dated from the establishment of sawmills, for in Exeter in 1650, in connection with the tax on staves above

[1] Walker, The Congregationalists, p. 231 *et seq.*

[2] I N. H. Prov. papers, 119.

[3] Bell, Hist. of Exeter, 161.

[4] Adams, Annals of Portsmouth, 42.

[5] Bell, Hist. of Exeter, 158. The same tax was raised 50% in 1656.

mentioned, it was provided that "what is due from the saw mills" should also be appropriated to the support of the ministry. The same tax appeared in Dover in 1654.[1] In 1656 the mill taxes in Exeter were especially named and devoted to the ministry, it being further provided that while so taxed the mills should pay no town rates.[2] Later, in 1669, in Dover, forty pounds sterling of the mill rents were "set apart" for the ministry.[3] Such instances tend to show that the tax was adapted to the circumstances of the places, as Dover and Exeter were both largely devoted to the lumbering industry.

In the erection of houses of worship the method followed in Exeter in 1651 seems to have been a typical one. A committee was chosen to call the men to work upon the meetinghouse "as need shall require." As they were to make a rate it is to be presumed that the work was to be equalized according to each man's "abilities". In case of neglect to appear a fine of five shillings per day was to be "seized by the constable."[4] The next year the committee was empowered to require servants "to come forth to work," and owners of teams were to bring their teams when called upon by those in charge.[5] When the more indirect means as stated above failed to produce a sufficient revenue, recourse was had to a tax upon the inventory. The col-

[1] I N. H. Prov. papers, 215. Here it is denominated the rent of the sawmills. Whether the use of the word "rent" implies that the mills were owned by the town, or is only intended to specify the returns upon the privileges given the proprietors, is uncertain. As no instance of town proprietorship of sawmills has been discovered, the latter view seems more probable.

[2] Bell, Hist. of Exeter, 165.

[3] I N. H. Prov. papers, 308.

[4] Bell, Hist. of Exeter, 162.

[5] Bell, Hist. of Exeter, 162.

lection was made either by a regular taxgatherer or sometimes by the pastor himself, probably to save expense of collection. In the latter case the minister was authorized, "in case of refusal," to hand the list over to the constable, who was to collect it by distraint if necessary.[1]

SEC. 3. *The School Tax.* In 1647 Massachusetts enacted her famous school law requiring every settlement of fifty households to employ a teacher, and one of one hundred families "to fit for ye University."[2] In the first case the selectmen of the town might decide whether the teacher should be supported by the parents of the pupils or by the citizens generally. Bell in his scholarly history of Exeter says: "The records of the town contain no imformation in regard to the earliest schools, as they were probably maintained not at the public charge, but by the parents of the children who attended them. Not for many years after towns were made by law responsible for the maintainance of schools, do the records refer to the subject."[3] The same method was probably employed in the town of Portsmouth, as it is not to be presumed that a town whose citizens in 1669 pledged to give £70 annually for seven years[4] to aid in the erection of a building for Harvard College deprived its own children of the advantages it thus helped others to obtain. On the 2d of April, 1649, the selectmen of Hampton employed a teacher at a salary of twenty pounds per annum "in corne and cattle and butter att price currant . . . to teach and instruct all the children of our town or belonging to our town, both mayle and

[1] Bell, Hist. of Exeter, 166.
[2] II Mass. Rec., 203.
[3] Bell, Hist. of Exeter, 285.
[4] Adams, Annals of Portsmouth, 50.

femaile w^ch^ are capable of learning."[1] From this date Hampton seems to have supported a free public school the greater part of the time. An appropriation of twenty pounds per annum "for the mayntenance of a school-master in the town of Dover" was voted in 1658.[2]

SEC. 4. *The Highway Tax.* The highway tax in the early period was laid upon polls and teams, those owning teams being required to furnish them during the days set apart for mending the highways. The assessment was a certain number of days' work, or, in case of absence, whether unavoidable or not, a fine of a certain number of shillings per day. Thus in Exeter on June 17, 1644, it was agreed that "4 days shall be set apart to mend the highways and those that are absent on the specified days shall be fined five shillings for every day." Those having teams had to work them or pay a fine of twenty shillings per day.[3] In Hampton in 1645, upon laying out a certain piece of new road, the total length was divided up into as many shares as there were taxable polls, and a fine of 2 *s.* 6 *d.* was assessed against each person to whom the work was assigned in case he did not have it completed within the specified time.[4] Five years later, 1650, when a vote was taken to repair the same piece of road, each person was required to repair the share that he built. In case of default a fine of 10 *s.* per rod was to be collected by the constable and used to repair that share.[5]

SEC. 5. *Taxes on the Inventory.* It seems probable that taxes on the inventory of polls and of ratable

[1] For a full account of the schools supported in Hampton see Dow, Hampton, I, 473.

[2] Dover Town records, I N. H. Prov. papers, 234.

[3] Bell, Hist. of Exeter, 446, quoting from Exeter Records.

[4] Dow, Hampton, 42.

[5] Dow, Hampton, 42.

estate occupied a much less prominent place in local taxation during the earlier than during the later period.[1] The town officers either served without pay or received their salary in fees and fines. Schools were supported largely by their patrons, the roads were built and repaired by labor, while the ecclesiastical tax was assessed, when possible, on the various forms of industry. Aside from schools, roads, ministers, and officers there were ordinarily few objects toward which the public taxes were appropriated. However, when other means failed the general property tax was laid to supply any deficiency, and in case of an Indian uprising doubtless became very important.

SEC. 6. *Special Taxes and Fines.* The most important source of revenue that may properly be classed under the above heading before 1680 was undoubtedly the taxes assessed on mill privileges. These taxes seem to have been laid on something more than the privilege, for with the original grant there was usually a tract of timber land varying from ten to fifty acres. While the taxes on the mills were often devoted to the support of the ministry, they were also in other cases appropriated to the common town charges.[2] A peculiar instance of a special tax occured in Hampton, January 12, 1668, when the town made it a rule that un-

[1] Even in the period of complete independence the towns followed, in general, the provisions of the Massachusetts tax law that was formulated later. For example, in Exeter in 1640 it was voted that the town charges were to be "ratably proportioned among the inhabitants, owners of land and cattle and privileges." Bell, Hist. of Exeter, 48. A month later it was voted that if any one kept town lots vacant they should "pay such charges upon every lot as shall a Rise on the town rates." Bell, Hist. of Exeter, 439.

[2] In Exeter in 1652 one mill was taxed £10, and the total revenue from mills was £35, a sum double the province rate for Exeter in 1680.

married men with no estate upon which taxes could be assessed should be rated on an estate of £20 in the assessment of taxes, town or ministerial, unless the selectmen saw good reason to assess a smaller sum.[1] An application of the idea of taxation by labor, following out the method in vogue in mending highways, occurred in Dover in 1667, when a contract was let by the selectmen for a fortification to be paid for in days' works at 2*s.* 6*d.* per day to the amount of £100.[2]

The use of fines in the early times was much more prominent than in the later times. Some of the more common forms were laid (1) on officers for neglect of duty, (2) on citizens for the same offence,[3] (3) as penalties in civil actions, (4) as penalties in minor criminal offences. The primary object was in the interest of good government, not for revenue purposes. Yet the total amount thus exacted must have been considerable.

SEC. 7. *Collection and Exemptions.* The local taxes were collected by the same officers, armed with the same authority, as in the case of the collection of the colonial taxes. Much difficulty was experienced in the collection, owing largely to the lack of provincial currency. The minister was in some cases empowered to collect his own rates, while the collection of the highway tax was superintended by the surveyors. With the growth of the province the duties of the constable as collector be-

[1] Dow, Hampton, 59.

[2] The method of paying taxes by labor was rendered almost absolutely necessary by the lack of any suitable medium of exchange. Taxes, when not paid in labor, were usually paid in "specie", *i.e.*, produce, stock, etc.

[3] In Hampton in 1639 a freeman was fined one shilling "for the use of the town" for failure to attend town meeting within half an hour of the time appointed. The constable was to forfeit double the amount if he failed to collect such fines. Dow, Hampton, 15.

came more important, owing to increased town activity and consequently larger taxes.

It seems probable that from the earliest times no property was taxed unless enumerated in the general tax laws. On this account there was no need to enumerate articles that were intended to be exempted, as their omission from the list would accomplish that end. Few special exemptions seem to have been made.

CHAPTER IX.

THE TOWNSHIP REVENUE, 1680–1775.

SEC. 1. *Taxes on Proprietary Rights.* The earliest form of local taxation in townships granted to a company of proprietors consisted in a uniform assessment upon shares. As early as 1673 the proprietors of Hollis entered into a compact agreeing that "if any settler should fail to pay his dues or taxes his lot to be seized by the town and held for payment."[1] A little later, 1689, in Hampton, £75 was raised equally upon shares to pay expenses of contesting the Mason claim. About 1720 this form of taxation became more important, owing to the rapid settlement of the interior, and continued to hold such a place in the early history of each township until the province was organized into full fledged towns. The rate was usually from 10 *s.* to 50 *s.* per share, and occasionally several rates were voted in a year. It seems that as an inducement for the proprietors actually to settle a provision such as the following, adopted at a general meeting of the proprietors of Chester, January 11, 1721, was often made: "Voted that each proprietor that does not settle pay ten shillings per year during three years, the whole to be divided yearly among those that settle."[2]

In many cases the charters provided that every proprietor should "pay his proportion of the town charge when and so often as occasion should require the same." To this was added "that upon default of any particular proprietor in complying with the conditions of this charter upon his part such delinquent proprietor shall

[1] Worcester, Hist. of Hollis, 23.

[2] Chase, Hist. of Chester, 15.

forfeit his share to y^e^ other proprietors, which shall be disposed of according to the major vote of the said company at a legal meeting." Acting under such power the proprietors of Rochester in 1727 notified delinquents that they might expect to be voted out. The same year at Concord, at a meeting of the proprietors, it was agreed and voted "that Solomon Martin be admitted and settled in the place of Nathaniel Barker's right, who refusing to pay his proportional charge, the same was paid by the said Solomon Martin to the treasurer, the 8th day of July last."[1] At the same meeting collectors were appointed with power of attorney "to sue for and secure in the law the sum or sums raised on any settler or settlers as aforesaid who shall refuse to pay the same."[2] In 1734 an act was passed by the general assembly providing that lands of delinquent proprietors in Rochester might be taken "in execution or extent" and sold to pay taxes. In 1737, upon petition by the inhabitants, the political powers granted by the charter to the proprietors were transferred by act of the legislature to the residents, who were authorized to tax each proprietor's share "15 shillings per acre toward paym^t^ of a ministers salary" so long as they had an orthodox minister there, but to continue no longer than the end of the year 1742.[3]

An instance showing the difficulty experienced by those towns whose charters did not especially authorize the assessment and collection of taxes occurred in Gilmanton in 1737. Gilmanton was chartered in 1727, but not settled until 1761. A committee of the proprietors petitioned the legislature for authority to assess and collect taxes, alleging: (1) that the proprietors lived in other towns

[1] Bouton, Hist. of Concord, 86.
[2] Bouton, Hist. of Concord, 87.
[3] McDuffee, Hist. of Rochester, 77–78.

and some of them in Massachusetts, and that the proprietors had no legal authority to levy taxes; (2) that consequently the growth was retarded and an "unequal burden thrown upon such of the proprietors as are diligent and forward in carrying on the settlement;" (3) that already considerable expense had been incurred for highways, blockhouses, laying out lots, etc. Accordingly the petitioners prayed that the selectmen would clothe the proprietors with sufficient power to collect the taxes levied. The house agreed to the petition, but the council unanimously rejected it.

The same spirit in the two houses appeared in 1740, when the house passed a bill enabling proprietors to levy and collect taxes, in which the council again non-concurred. It seems probable that the same influence that caused the house in 1756 to favor a provincial land tax and the council to oppose it was active in the cases cited. The student of colonial history, versed in the motives that move legislative action, will doubtless inquire whether there was any relation between the continued refusal of the council to permit a general land tax, in either a direct or an indirect form, and the large holdings of land which that body individually possessed at all periods of our provincial history. It is quite probable that not until the reorganization of the council during the Revolutionary War (1781) did the legislature pass a general law enabling proprietors to tax their rights and collect the sums levied.[1] A combination of proprietary with township taxation constituted an intermediate stage between the early and the later history of taxation in the townships. This happened usually in settling and supporting a minister—a work beneficial both to the proprietors

[1] Laws, 1792, 369.

and to the residents, since it drew settlers and increased the value of the shares. Thus in Nottingham in 1742 a meeting of the proprietors and inhabitants was held at which both the settlement of a minister and the share of each party was agreed upon. Instances of this kind were numerous during the period from 1730 to 1760,[1] but in some cases a failure to agree upon the part each should contribute postponed the settlement of a resident minister for some years.

SEC. 2. *Taxes on Lands of Non-residents.* Previous to 1720 the increase of population in the province was slow, and was confined chiefly to the four original towns. After that date new townships were granted in comparatively large numbers, new settlements were pushed forward, roads laid out, blockhouses built, the land cleared, houses built, churches erected, ministers settled, and all the activities necessitated by subduing the wilderness were witnessed. Land as a measure of ability to bear the public charges became relatively more important. Accordingly we find beginning with the period of active settlement a series of attempts on the part of the actual settlers to secure by special legislation the authority to lay and collect uniform land taxes for local purposes. One of the earlier instances occurred in 1731, when the general assembly authorized the towns of Chester, Nottingham, and Rochester to assess the lands of non-residents for a period of three years with the powers of distraint in case the taxes were not paid. The reason given was that the towns "Labor under inconveniences in carrying on y^e^ public affairs especially supporting the gospel ministry."[2]

[1] Chase, Hist. of Chester, 74; McDuffee, Hist. of Rochester, 75.

[2] Chase, Hist. of Chester, 75.

There are strong grounds for believing that the tax on lands, especially when it applied only to the lands of non-residents, was introduced into the province through the towns settled under the jurisdiction of Massachusetts. In 1739, when Massachusetts granted a charter to West Dunstable (the last charter granted by that government to a town now within the New Hampshire limits), the citizens of that parish were "empowered to assess and lay a tax of two pence per acre for the space of five years on all the unimproved lands belonging to the non-resident proprietors to be applied to the support of the ministry."[1] This parish was said to contain 70,000 acres, and at that time twenty-five resident families. It is not probable that these twenty-five families owned more than 800 acres each, or a total of 20,000 acres. The tax on the remainder at two pence per acre would have yielded £416 13*s.*,[2] a tax of no slight importance it will be admitted. The collection of this tax was interrupted by the settlement of the boundary line controversy between Massachusetts and New Hampshire, as a result of which the parish found itself transferred from the jurisdiction of the colony under which it had been organized and settled to that of New Hampshire. The town was incorporated under the name of Hollis, April 3, 1746. As no power was granted the town to tax non-resident lands the town voted that year to lay a tax of 2*d.* per acre upon all the lands of Hollis "for five years for the support of the gospel ministry and y^e^ arising charges of said town and to petition the Great and General court for Strength to Gather and Get the money of the non-residents."[3] The petition is interesting as indicating

[1] Worcester, Hist. of Hollis, 38.
[2] Worcester, Hist. of Hollis, 41.
[3] Worcester, Hist. of Hollis, 47.

the method of reasoning by which the residents justified the tax. The petition recited: (1) that the settlers, "although a considerable progress has been made in agriculture," found the charges for settling a minister and building a meetinghouse very burdensome; (2) "That a considerable part of the best lands in s[d] town belong to non-resident proprietors who make no improvement;" and (3) "That by the arduous begining the settlement & heavy charges by us already paid has greatly advanced their lands and they are still rising in value equal as the resident propri[rs] though the charges hitherto and for the future must lye on y[e] settler only unless we obtain the assistance of the Hon[ble] Court."[1] The petition was granted May 14, 1747, but the tax was limited to four years. During the four years of the tax the resident landowners increased from forty-eight to seventy, the non-resident landowners decreased from thirty-three to twenty-four. Out of a tax of £394 17 *s.* 8 *d.* on the land assessed in 1747, the non-resident land owners paid £256 6 *s.* 8 *d.*, or more than two-thirds. The last year of this tax, 1750, the amount of the land tax paid by the two classes had become much more nearly equal. The tax seems to have had the salutary effect of increasing the number of the resident proprietors as well as providing for the support of the ministry.

This case illustrates the nature of the tax and the method under which it was authorized and collected. As the tax was subject first to the will of the town and second to the legislature no general statement can be made as to its extent among the towns. The legislative records show that nearly all the towns along the Merrimac valley that were settled about the middle

[1] Worcester, Hist. of Hollis, 47; V N. H. Prov. papers, 886.

of the eighteenth century were empowered to lay such a tax, the tax ranging from one-half to six pence per acre, and extending through periods of from one to six years. In some instances a town at the expiration of its term petitioned for an extension of the period with successful results. In several cases towns failed to receive the power through the reluctance of the council to sanction any general land tax.

During the period of transition in which the wilderness was being transformed into a productive farming country the lands of non-resident owners were growing more valuable through the efforts of the actual settlers, and the tax met all the requirements that the advocates of a sound and equitable system of public taxation could demand. In the cases where the legislature refused to sanction such a tax the evidence indicates that such refusal, whatever may have been the grounds averred, was due to self-interest on the part of large land holders.

SEC. 3. *Revenue from Town Lotteries.* In 1754, in order to suppress private lotteries,[1] "an act for the suppressing of Lotteries" became a law. The preamble to the act stated that "there have been lately set up within this province sundry Lotteries," indicating their recent origin. The act further showed the purposes for which the lotteries already established were designed by placing a penalty of £500 upon any person or persons who should undertake to "set up any lottery or expose for sale or dispose of any estate real or personal by way of lottery." A further clause inflicted a penalty of £200 upon any person or persons who should offer for sale "any lottery tickets for the sale of any estate whatsoever real or personal." The law was not to extend to

[1] Laws, 1761, 197.

any lotteries already begun, nor to those authorized by act of parliament or law of the province.

The first lottery authorized by the legislature was designed for the purpose of opening a harbor at Rye in 1756. The act authorizing this lottery provided that it should be subject to legislatlve control, and proper safeguards were provided against fraud. Three-fourths of the tickets were blanks, and the profits were to be £6000.[1] After this date lotteries were granted to Portsmouth (1759) for paving streets, to New Castle (1760) for a bridge, to Rye (1764) for building a road, to Stratham (1766) and to West New Market (1768) for building bridges, and to Gosport (1766) for improving the harbor. Some of these appear to have been successful, others failed for various reasons. On the 24th of October, 1768, the manager of the Isles of Shoales lottery appeared in the house and represented that he could not sell the lottery tickets owing to scarcity of money.[2] The managers were authorized by vote of the legislature to give public notice that they would refund all money paid for tickets. This was done and the lottery abandoned. Again, on the 18th of March, 1768, the governor assented to a bill for a lottery to build a bridge over Exeter river.[3] Two years later, March 29, 1770, the petitioners for the Exeter river bridge lottery reported that the two years allowed had expired, and "notwithstanding their utmost diligence used in prosecuting said design they had not been able to complete the same." They were allowed an extension of two years to complete the work.

[1] VI N. H. Prov. papers, 125. See scheme in XIII N. H. Town papers, 361.

[2] VII N. H. Prov. papers, 193.

[3] VII N. H. Prov. papers, 165.

Although private lotteries were effectually suppressed by the act of 1754,[1] the public lottery continued to flourish, and within fifteen years had proved so disastrous to legitimate industry and so prolific of fraud that the institution called out the following instructions from the crown, June 30, 1769: "Whereas a practice hath of late years prevailed in several of our colonies and plantations in America of passing laws for raising money by instituting public lotteries . . . [and whereas] such practice doth tend to disengage those who become adventurers therein from that spirit of industry and attention to their proper callings and occupations on which the public welfare so greatly depends . . . and also hath been extended to enabling private persons to set up such lotteries by means whereof great frauds and abuses have been committed . . . . it is our will . . . that you [the governor] do not give your assent to any act or acts for raising money by the institution of any public or private lotteries whatsoever until . . . you shall have received our directions thereupon."

SEC. 4. *Revenue from the Public Domain.* The value of the land reserved in the town grants for the purposes of supporting the ministry and public schools depended largely upon the wisdom of the local authorities. By the terms of the charter granted to Chester in 1722 it was provided "That a Proprietor's share be reserved for a parsonage, another for the first minister of the Gospel, another for the benefit of the school." The same provisions were generally made in the charters to other towns granted prior to Governor Benning Wentworth's administration. During his term, 1741–1769, four shares in each township were generally reserved for public purposes, "one whole share for the incorporated

[1] VII N. H. Prov. papers, 231.

[society] for the propagation of the gospel in Foreign parts, one whole share for a Glebe for the Church of England as by law established, one whole share for the first settled Minister of the gospel, and one whole share for the benefit of a school in said town." Dr. Bouton affirms that a careful examination of all the charters granted by the above governor shows that such was the general reservation in the charters of that period. The townships granted by Governor Wentworth during the twenty-five years of his service constituted a very large part of the province. Hence the method that he followed in reserving rights for public purposes may be considered to represent in a broad way the general policy of the provincial government.

The shares granted for the support of the ministry were usually at once occupied by the first settled minister, and became an essential part of his support. The schools, developing slowly, received less benefit, inasmuch as the chief value of land in the period under consideration consisted in its ability to support life under the active care of its occupant. School land was usually rented for a very small sum yearly. In other cases the land was sold for a trifle, and the schools in that case received little benefit.

SEC. 5. *Taxes on the Inventory.* In spite of all the attempts of the town or provincial government to "ease the burden" of taxation upon the polls and ratable estate by means of taxes upon lands or proprietors' rights, the tax upon the general inventory furnished the substantial part of the revenue, local as well as provincial. By the act of 1692 "concerning y^e^ prudential affairs in y^e^ town and Province" the assessments on the inventory were limited to "y^e^ necessary charges arising

within these towns."[1] The more important objects for which taxes were assessed will be considered more in detail in a subsequent section. It is sufficient here to state that the towns assumed and exercised from the first a large degree of liberty in choosing the objects for which they appropriated the taxes. By act of 1719 the selectmen were authorized to assess the persons and estates within the town for "such sum and sums of money as hath or shall be ordered, granted and agreed upon from time to time by the inhabitants in any town meeting regularly assembled or the major part of those present at such meeting for the maintenance and support of the ministry, schools, the poor and for the defraying the other necessary charges arising within the said town."[2]

SEC. 6. *Taxes for the Support of the Ministry.* The first provincial law "For the support of the ministers of the gospel", 1682, empowered the selectmen "to make such rates upon all persons and estates in the several towns . . . as may answer the occasions aforesaid."[3] In 1693 "An act for Maintenance and Supply of the Ministry within this Province"[4] provided that the freeholders might select and make arrangements with a settled minister, "and the selectmen then, for the time being shall make Rates and Assessments upon the Inhabitants of the town for y^e^ payment of the Ministers salary as aforesaid, in such manner and form as they do for defraying of other town charges." Only those who "constantly attend the public worship of God on the Lord's day according to their own persuasion" were excused from paying toward the town minister. The

[1] III N. H. Prov. papers, 167.
[2] Laws, 1761, 31–32.
[3] Provincial laws, I N. H. Prov. papers, 447.
[4] Provincial laws, III N. H. Prov. papers, 189.

law also authorized public taxation "for building and repairing of meeting houses and ministers houses." The act of 1693 was reënacted permanently in 1714, and continued in force till 1792, when it was repealed. By the act of 1719[1] regulating townships the selectmen were "empowered to assess the inhabitants and others resident within such town and the Precincts thereof and the Lands and Estates within the bounds" such sums as should be granted by a majority in town meeting "for the maintenance and support of the ministry." Only a part of the minister's support was derived from the tax on the general inventory. His shares from the public domain, one and sometimes two, taxes on proprietary rights, contributions of labor and provisions, and the sale of pews provided a substantial part of his support. That portion of the minister's salary paid in money ranged usually from about £50 to £100 in lawful money or its equivalent. Rev. John Pike was settled at Dover in 1686 at £60; Rev. Jeremy Belknap was settled in the same parish in 1766 at £100 per annum.

SEC. 7. *Taxes for the Support of Education.* The act of 1693[3] providing for the support of the ministry empowered the selectmen in their respective towns to "raise money by an equal Rate and Assessment" upon the inhabitants "as in this present act directed for the maintenance of the ministry" for building and repairing schoolhouses and "allowing a salary to a school master." Every town failing to provide a schoolmaster was made liable to a fine of ten pounds per annum "to be paid one half to their Majesties, the other half to the poor of the town." This law was made permanent in

[1] Laws, 1726, 51.
[2] Laws, 1726, 135.
[3] Laws, 1692–1701, III N. H. Prov. papers, 189.

1714,[1] but the penalty was omitted. The act of 1719[2] relating to townships authorized the selectmen to make assessments for schools when such tax was voted by the town assembled in a legal meeting.

The same year, 1719, the Massachusetts school law of 1647, requiring every town having fifty householders or upwards to provide a school and of one hundred householders to provide a grammar school, was adopted. The selectmen were empowered to "agree" with a schoolmaster, and to raise money by a rate upon the inhabitants to pay for the same. Any town failing to comply with the terms of the act within six months incurred a penalty of 20 pounds, to be recovered through the court of quarter sessions and appropriated by that court to such school within the province as they deemed to be most in need of aid. An addition to this act passed in 1721[3] stated that "the selectmen of sundry towns . . . neglect to provide grammar schools," and provided that "not only each town but each parish" should support a grammar school as before required by law. In case the town or parish was destitute of such school for one month after the publication of the law, "the selectmen of such town or Parish shall forfeit the sum of Twenty pounds for every such neglect, to be paid out of their own estates and to be applied toward the defraying the charges of the province."

Notwithstanding the excellence of the school law as perfected in 1721, the evidence indicates that public taxation for schools was irregular in time and uncertain in amount. The town of Chester in 1748 voted "that the town defend and secure the selectmen from any

[1] Laws, 1726, 51.
[2] Laws, 1726, 133.
[3] Laws, 1726, 160.

damage they may come at for not providing a Grammar school."[1] Again in 1756 the same town was warned by an "express from the Court" to provide a grammar school, and thereupon voted "to fulfil and answer the interests of the law if possible." Amherst, another of the leading towns, shows a similar record. The town was incorporated in 1762; there were then one hundred and ten tax payers and the largest tax paid by a single individual was £46 18*s.* 3*d.* Yet in the years 1763, 1765, and 1766 no mention was made of any effort to secure an appropriation for schools. In 1764, 1767, and 1769 the town refused to vote a tax for that purpose. Finally the selectmen were in danger of being "presented" for neglect of duty, and on the 12th of December, 1769, the town voted to "keep a school a part of this year," and granted the sum of £13 6*s.* 8*d.* for that purpose.[2] In the light of such facts it is probable that Gov. Wentworth expressed what was only too true when in 1771 in a message to the assembly he said that "nine-tenths of your towns are wholly without schools or having vagrant teachers . . . . worse than none . . . unknown in principle and deplorably illiterate."[3]

SEC. 8. *Taxes for the Support of Highways.* The public highways were repaired by labor throughout the provincial period with the exception of the years from 1718 to 1721. In 1718 the selectmen of their respective towns were empowered and required "to agree with two or more able and sufficient men yearly to mend and keep such ways in Repair, at as moderate a rate as they can and for the payment thereof shall raise money by way

[1] Chase, Hist. of Chester, 278.
[2] Secomb, Hist. of Amherst, 319.
[3] VII N. H. Prov. papers, 287.

of assessment upon the inhabitants of the respective towns as they do for the defraying of their other town charges,[1] Any law, usage or custom to the contrary not-with-standing."

This method was unsuited to the conditions of the province, and was abandoned after a trial of three years. The house inaugurated a movement looking toward reëstablishing the former system by a vote on April 21, 1721, "that the highways in y^e^ several towns within this Province may be Repaired by labor under y^e^ direction of surveyors as formerly."[2] The law of April 25, 1721, stated that "it is found by daily experience that the Repairing Highways by Assessments on the several Inhabitants of each town within this province is attended with sundry Inconveniences." The act provided "that hence forwards all Highways . . . shall be repaired by labor." Every man except the governor, lieutenant governor, ministers, and schoolmasters was required to work or to send a "sufficient man" in his place, or to pay a fine of five shillings per day to be expended under the direction of the surveyors. The surveyors were chosen annually by the town, and were authorized "to warn the inhabitants of their several districts to appear with such necessary tools . . . at such place and time" as they thought best, and to impress such oxen, cart wheels, chains, and yokes as they thought necessary. This law seems to have been generally satisfactory, since it was continued substantially in the above form for nearly a century and a half.

The expense of laying out new highways was borne either by the towns or by the land through which the road passed. The proprietors of Amherst in 1745

[1] Laws, 1726, p. 64.

[2] XIX N. H. State papers, 150.

appointed a committee to lay out highways, and instructed them to lay out no roads except in places where the owners would give the land for that purpose.[1] In the case of the public roads undertaken during the administration of Governor John Wentworth, 1767–1775, the tax for their support seems to have been laid uniformly upon the lands of the towns through which the roads passed. The act of 1771 for establishing and making passable a road from the governor's house in Wolfeboro to Dartmouth College provided that the proprietors and owners of land within the towns should make the road "passable to the acceptance of the committee" appointed to lay out and have general charge of the building of the road, at the charge of the town "by an equal rate on all the land therein excepting land reserved for public purposes."[2] In case of neglect the land was to be sold and the proceeds used for building the road. In 1766 the selectmen of each township were "empowered to raise money . . . & to pay the same out of the public stock" to make up any deficiency caused by changing the highways. They were also authorized to sell the land when the road was abandoned, to buy land for the new way, and if the money thus received was not sufficient, to raise the residue by public taxation.

In general throughout the provincial period the towns voted in public meeting the amount to be expended upon the highways, and the selectmen apportioned this amount among the districts in accordance with the relative share that each district paid of the public taxes, the selectmen having also a general oversight of its expenditure. The highway surveyors were

[1] Secomb, Hist. of Amherst, 42.

[2] VII N. H. Prov. papers, 283.

the administrative officers superintending their districts under the direction of the selectmen.

SEC. 9. *Taxes for Town Charges.* The act of 1719 "Regulating Townships, Town officers, &c" empowered the selectmen to assess the "Inhabitants and other Residents within such towns . . . and the Lands and Estates lying within the bounds of such towns . . such sum or sums of money as hath or shall be ordered . . . for the maintenance and Support of the ministry, schools, the Poor and for the Defraying the other necessary charges arising within the said town."[1] These "necessary charges" were small in comparison with later times. Some of the more important charges were: fortifications, block houses, scouts, watchers, and soldiers in time of Indian warfare; services and expenses of certain officers, such as constable, fence viewers, selectmen, town clerks; the care of certain town property and the fulfilling of certain public functions, such as the maintenance of standard weights and measures, the care of the poor and infirm, with other less common objects for which town action was necessary. All these "necessary charges" constituted a constant, but not heavy, expense.

SEC. 10. *Administration.* The first provincial law regulating township affairs was enacted in 1692.[2] By the terms of this act "y^e selectmen of each town within this province or y^e major part of them w^{th} a Justice of y^e Peace, are Impowered to make assessments on y^e visible Estates of y^e Inhabitants & of p'sons according to valuation of there incomes, to defraye y^e necessary charges arising w^{th}in there towns." Substantially the same authority was given the selectmen in the act of

[1] Laws, 1726, 135.

[2] Provincial laws, 1692–1702, III N. H. Prov. papers, 167.

1719[1] "Regulating Townships, Town officers etc." The duties of these officers and the legal sanctions under which they were placed by the provincial laws have already been noticed in the chapter on the provincial revenue.

Local taxes were collected by the same officers, acting under the same general laws, as were the provincial taxes. The law of 1680 authorized the selectmen, in case the constable failed to clear up his rates, to direct their "warrants to y^e^ constables next chosen to distrain upon the estates of such constables as shall faile of their duties therein."[2] The act of 1693 authorizing imprisonment of the constables for neglect of duty "where no estate appears" applied to local as well as to provincial taxes. The same is true of succeeding acts, except that the warrant was issued from, and the returns were made to, the local officers—to selectmen for the town, to justices of the peace, or to church wardens in connection with such officials in parish affairs. The act of 1758[3] authorizing towns to employ a collector instead of constables for the collection of taxes transfered all the rights and duties of the constable to the collector as regards both local and provincial taxes.

[1] Laws, 1726, 133–8.
[2] Provincial laws, 1680, I N. H. Prov. papers, 396.
[3] Laws, 1761, 201.

CHAPTER X.

THE TOWNSHIP REVENUE UNDER THE STATE GOVERNMENT, 1776–1900.

SEC. 1. *Taxes on Proprietary Rights.* During the latter part of the provincial period the proprietary taxes were of considerable importance; the proprietors built roads, at least partially supported public worship and education, and in many ways paved the way for organic town life. After the Revolution, however, the state rapidly filled with settlers, and the township organization occupied the field partially filled before by the proprietors. The courts of New Hampshire have held that the act of 4 George I enabling the proprietors of common and undivided lands to sue and be sued virtually made such proprietors corporations in fact, although not expressly declared to be such.[1] The original proprietors and their successors continually exercised such powers. Moreover, the statutes expressly conferred upon them the power to assess and collect taxes and to sell the land of any delinquent. It is not certain that the act of 1 George III[2] was continued in force longer than four years. The act of October 28, 1768,[3] seems to imply that it was then in force. In any case, an act of June 18, 1771,[4] revived the act in question, and continued it in force for five years, or until January 1, 1776. The act of April 9, 1777,[5] reëstablished the general system of laws in force at the time

[1] 4 N. H. Reports, p. 101.
[2] Compiled laws, 1815, p. 597.
[3] Compiled laws, 1815, p. 599.
[4] Compiled laws, 1815, p. 601.
[5] Compiled laws, 1815, p. 469.

that the present government was assumed, January 5, 1776. Accordingly the act of 1 George III must have been the law of the state for the greater part of the time from 1760 until 1781, when the first permanent statute on the subject was enacted. [1]

The act of 1781 [2] provided (1) that the proprietors at any legal meeting might vote taxes in proportion to the interests lying in common; (2) that assessors might be chosen to make the assessment upon the individual interests and commit the list with a warrant to the person chosen to collect the same; (3) that the interest and property of any delinquent proprietor or owner might be sold for unpaid taxes; (4) and that liberty of redemption might be granted on the payment of the taxes, interest, and charges within two months [3] from the date of the sale. This act also provided that if the lands were divided before the terms and conditions of the grants or charters were fulfilled, the lots might be assessed their proportion of the taxes voted, as in the case of the common lands. This last provision was amended by act of November 10, 1784,[4] which provided that in cases other than those to fulfill the conditions of the grant, the lots divided or severed might be taxed if the common lands were not sufficient to satisfy the taxes, and at the same time allowed the owners of the severed lots to vote with the proprietors. Both these provisions were repealed by the act of December 22, 1808,[5] which enacted among other things that "no proprietors of common and un-

[1] The act of 1781 legalized all acts of proprietors which were passed after the laws of the state on proprietary rights had lapsed as fully as if the said laws had continued in force.

[2] Perpetual laws, 1789, p. 93.

[3] Six months for those engaged in war or in captivity or on public business out of the state.

[4] Revised laws, 1830, p. 114.

[5] Revised laws, 1830, p. 118.

divided lands shall have power to tax any lands holden in severalty; any law to the contrary notwithstanding." The act of June 17, 1796,[1] made the time and mode of redemption the same as in the laws providing for the redemption of land sold for state and county taxes.

Since 1808 there has been no essential change in the laws relating to the taxation of common lands. The meagreness of the legislation, correctly interpreted, indicates, as already stated, that during the nineteenth century the common and undivided lands were of small importance in the fiscal history of the state.

SEC. 2. *Taxes on Lands.* It will be remembered that the land taxes imposed by special acts of the general court of New Hampshire during the provincial period were usually for the purpose of supporting the gospel ministry. Such taxes were justified by the "benefit" theory of taxation. During the years 1800 to 1820, when uniform land taxes were somewhat common, they seem to have been justified on the same grounds, but were devoted to other purposes. In all cases the taxes of this nature were to be appropriated to building roads and bridges. The towns making use of these taxes were located in the northern part of the state, in Grafton or Coos County,—regions then thinly settled,—and the roads so built were usually "through roads" designed to form the main line of transportation to more populous parts of this and other states. The tax was usually assessed and expended by a committee appointed by the legislature, though sometimes by the selectmen. In nearly all cases the land owners were privileged to "work out" the taxes so assessed. It does not appear

[1] Revised laws, 1830, p. 115. By act of 1798 (Revised laws, 1830, p. 116) the time was stated to be one year.

that uniform land taxes were assessed after 1818 for any purpose.[1]

The accompanying table shows to what extent use was made of such taxes :—

Year.	Rate in cts. per acre.	Town.	Purpose.
1801	3	Danbury,	Roads and bridges
1805	1	Durand,	" "
1805	3	Cockburn,[3]	" "
1805	3	Winslow's Location,	" "
1805	3	Whitefield,	" "
1805	?	Piercy,	" "
1806	2	Bethlehem,	" "
1806	2	Franconia,	" "
1806	2	Lincoln,	" "
1806	2	Stewartstown,	" "
1809	2	Elsworth,[3]	" "
1809	3	Peeling,[3]	" "
1810	2	Coventry,	" "
1810	1½	Benton,[3]	" "
1810	3	Colebrook,	" "
1810	½	Millsfield,	" "
1810	2	Errol,	" "
1812	2	Jefferson,	" "
1813	3	Alexandria,	" "
1813	2	Peeling,	" "
1813	2	Lincoln,	" "
1813	3	Franconia,	" "
1814	1½	Eaton,[2]	" "
1814	3	Barker's Location,	" "
1816	2	Brettenwoods,	" "
1816	3	Lincoln,	" "
1817	4	Dalton,	" "
1817	4	Durand,	" "
1818	2	Winslow's Location,	" "
1818	2	Paulsborough (Milan),	" "
1818	2	Waynesborough,	" "

SEC. 3. *License Fees.* The state has licensed showmen, ventriloquists, billiard and pool tables, and theatrical and dramatic shows primarily as a police measure,

[1] It was held by the supreme court that the legislature had no right to grant taxes on lands in incorporated and unincorporated places for the purpose of making or repairing roads. 4 N. H. Reports, p. 565.

[2] Unimproved lands. [3] Voted and tax assessed by selectmen.

not for the sake of the revenue that might be obtained from these sources. Still, since the towns and cities have received a small revenue from such licenses, it is necessary to treat the subject very briefly here.

Showmen, ventriloquists, tumblers, rope dancers, persons exhibiting animals, and persons performing feats of agility or slight of hand for pay were first required to take out a license of the selectmen of the town in 1821. The act[1] prescribed fees varying from $3 to $30, the exact amount to be fixed by the town authorities in each case. In 1835[2] the fee was raised to $30—$50; in 1867[3] to $10—$300; in 1876[4] the minimum fee was reduced to $1, making the limits $1 and $300, at which figures it remains at the present time. By act of 1850[5] theatrical and dramatic shows were required to take out a license as provided for showmen, ventriloquists, etc. The discretion of the authorities of the town or city was somewhat limited in 1878[6] by fixing the maximum fee for a license to exhibit in any hall at $5, and again in 1883[7] at $50.

Before 1878 billiard and pool tables and bowling alleys had been taxed to their owners as property, their value being included in the inventory. The tax commission of 1878 recommended a specific tax instead of the former method, and their recommendation was adopted. The license fee was fixed at $10 for each billiard table or bowling alley kept for hire. An annual license was issued on May 1st by the clerk of the town or city, and

[1] Laws, 1821, p. 390.
[2] Laws, 1835, p. 183.
[3] General statutes, 1867, p. 211.
[4] Laws, 1876, p. 568.
[5] Laws, 1850, p. 952.
[6] General laws, 1878, p. 272.
[7] Laws, 1883, p. 25.

the fee was payable to that officer. This act was amended (1) in 1879[1] by allowing the person in charge of a billiard table or bowling alley kept for hire to take out a license for six months at $5, and (2) in 1883 by adding pool tables, and by providing that billiard tables, pool tables, and bowling alleys in connection with any saloon or restaurant should pay a license even if not kept for hire. The amendments of 1879 and 1883 were repealed in 1887, and the original act further amended. The act of 1887[2] provided that licenses of the above description might be granted and revoked by the mayor and aldermen of any city or the selectmen of any town. All other provisions, excepting the privilege of 1879 for a half year license, were essentially unchanged. This act was amended in 1897[3] by making the fee for tables or alleys in connection with summer hotels $4 each in place of the annual license fee of $10.

The revenue from this source, as already stated, though of growing importance, has been insignificant when compared with that derived from direct taxation, as the following table shows :—

Year.	City or town.	From licenses.	Revenue from all sources.
1832	Portsmouth,	$ 6 00	$26,000 00 approx.
1833	Portsmouth,	5 00	28,000 00 "
1841	Chester,	2 00	3,397 48
1845	Manchester,	60 00	30,000 00 approx.
1852	Manchester,	160 00	49,000 00 "
1884	Hanover,	39 50	13,261 31
1885	Hanover,	9 50	11,676 72
1897	Hanover,	120 00	16,390 70
1898	Hanover,	120 00	17,032 20

The policy of licensing taverns and retailers was handed down from provincial days. The act of 1827[4]

[1] Laws, 1879, p. 342.
[2] Laws, 1887, p. 444.
[3] Laws, 1897, p. 32.
[4] Laws, 1827, p. 371.

was the first, however, to impose a fee for the license. The fee imposed by this act was merely nominal—not less than two nor more than five dollars. In the commissioners' report on the revised statutes of 1842[1] the above fees were retained, but the legislature in the final revision[2] struck out the clause imposing a fee, and no fees were thereafter imposed. Since 1849,[3] when town agents were first authorized, and more especially since 1855,[4] when the prohibitory law was enacted, the towns have derived a small revenue from the liquor agencies. In the town of Hanover, which may be considered fairly representative, the revenue in 1876 was $207.70; in 1881, $309.12; in 1884, $413.70; and in 1885, $421.06.

The earlier acts granting licenses to peddlers and hawkers made no direct reference to temporary merchants who rented a store for a part of the year and escaped the assessment on the first of April. An act of June 25, 1858,[5] however, provided for such cases. The fee was fixed at not less than $50 nor more than $100, the proceeds to be for the use of the town. An amendment of 1876[6] reduced the minimum fee to $10, but left the maximum undisturbed. In 1878 the revenue from the above source was made payable to the state treasury. The act of 1893,[7] already referred to, was in one sense a compromise measure—it allowed peddlers or hawkers to choose whether they would have a state, town, or county license. In case the peddler wished a town license, the fees accrued to the town. At the same time the fees

[1] Commissioners' report, 1842, chap. 117, sec. 8.
[2] Rev. statutes, 1842, chap. 117, sec. 7.
[3] Laws, 1849, p. 847.
[4] Laws, 1855, p. 152.
[5] Laws, 1858, p. 1985.
[6] Laws, 1876, p. 568.
[7] Laws, 1893, p. 54.

from the licenses granted to temporary merchants were made payable to the town treasury instead of to the state treasury as had been the case since 1878. The fees for a temporary or auctioneer merchant, trader, etc., were fixed at a specific sum, $50. The fees for peddlers, hawkers, etc., were based upon the population of the town or city in question, viz.: $2 for every town of not more than 2000 inhabitants, and $1 for every 1000 additional inhabitants, but the fee was in no case to exceed twenty dollars. These rates were changed in 1897,[1] as follows:—

For a town with not over 1000 inhabitants,	$ 5 00
" " " " from 1000 to 2000 "	8 00
" " " " " 2000 to 3000 "	10 00
For every additional thousand inhabitants,	1 00

In all the cases referred to the acts were made enforceable by appropriate fines, the fine usually being divided between the person complaining and the town, city, or county as the case might be.

Since 1842 the towns have derived an increasing revenue from the licensing and taxing of dogs. The introduction of this system, partly for protection, partly for taxation, of regulating the keeping of dogs by licensing them was due to the commissioners of the revised statutes of 1842, who credit the clause to the revised statutes of Maine and of Massachusetts. The act of 1842[2] was permissive, not compulsory: "any town may make by-laws for licensing, regulating or restraining dogs . . . . and may affix penalties not exceeding $5 and the sum to be paid for any license not exceeding two dollars." This act has been amended twice: (1) in 1878,[3] when it was prescribed that whenever any town

[1] Laws, 1897, p. 65.
[2] Revised statutes, 1842, p. 241.
[3] Laws, 1878, p. 149.

neglected to make by-laws as permitted in 1842 the selectmen should make such regulations as they deemed expedient, the sum to be paid for a license to be not less than $2 for a male and $5 for a female dog, and the regulations to be in force until changed either by the town or by the selectmen; (2) in 1891,[1] when every owner or keeper of a dog three months old or over was required on or before the 30th day of April annually "to cause it to be registered, numbered, described, and licensed for one year." The fee was fixed at $2 for a male and $5 for a female, and provision was made for a license for any part of a year after May 1st at proportionate rates. From 1862 to 1893 dogs were also taxed. The first act of this nature, 1862,[2] was passed under the impetus of war expenses, and like many another war tax illustrates the tendency of such taxes to linger long after the necessity for their use has ceased. The rates were $1 and $2 for male and female dogs respectively. The act of 1862 specified dogs "one year old or over". This was amended in 1863[3] by making the tax apply to all dogs no matter how tender the age, and by prescribing that in case any dog appeared to have no owner the person harboring the same should be liable for the tax. This tax continued in force until 1893,[4] when it was repealed. The act of 1891 making license compulsory made the extra tax too burdensome. Outside of the cities small use was made of the provision of 1842. The dog tax of 1862–1893 acted as a substitute to a considerable extent. Under the compulsory act of 1891, however, a considerable revenue has been derived. For instance, in the town of Hanover the revenue in 1897

[1] Laws, 1891, p. 371.
[2] Laws, 1862, p. 2607.
[3] Laws, 1863, chap. 2728.
[4] Laws, 1893, p. 9.

was $264.00, and in 1898 was $269.50. The proceeds of the dog tax and license fee has been by law appropriated to two purposes: (1) to pay damages to sheep caused by dogs, and (2) to aid the public schools.

SEC. 4. *Taxes Collected by the State.* In the sections upon the state revenue that part of the insurance tax, the railroad tax, and the savings bank tax distributed to the towns was necessarily described. Aside from the above taxes the town has received a small revenue from what is known as the "Literary fund". But as the proceeds of this tax is appropriated directly to the aid of the common schools, it will be treated under the school taxes.

SEC. 5. *Taxes on the Inventory.* Two questions naturally arise at this point: (1) What limitations, if any, have been placed upon the amount of taxes that may be voted in any town, and what are the purposes for which such taxes may be appropriated? (2) To what extent have the voters exercised the right of taxing themselves? One fact needs to be kept in mind, viz.: it is only in the annual town meetings that the people directly vote the taxes which they themselves are to pay. State, county, and city taxes are authorized by the representatives of the people, not by the people themselves. The New England township is the nearest approach to a perfect democracy that exists in America. But it must be again remembered that the towns derive their powers from the state, and as an organization may be abolished and governed directly through the legislative and executive departments.

As a matter of fact, the purposes for which a town may vote taxes on the inventory have been and are restricted by both statute law and the state constitution. The first act of this nature after the Revolution,

February 8, 1791,[1] authorized towns to "grant and vote such sums of money as they should deem necessary for the the settlement, maintenance and support of the ministry, schools, meeting houses, school houses, the maintenance of the poor, for laying out and repairing highways, for building and repairing bridges, and for all the necessary charges arising with the said town, to be assessed on the polls and estates in the same town as the law directs."[2] On comparison it will be seen that the act of 1791 is a substantial copy of the act of 1719.[3] A more important step was taken in 1819, when the church was separated from the state, and the taxation of the towns to support public worship was forbidden[4] except to fulfill existing contracts.[5] Beginning with 1849 the policy of enlarging the sphere of appropriations for the towns is noticeable, and has been followed with increasing vigor until the present; to-day any town may legally raise money for the following purposes: to establish and maintain public libraries and reading-rooms for the free use of all persons of the town;[6] to encourage volunteer enlistment in case of rebellion or invasion;[7] to establish cemeteries and receiving tombs;[8] to purchase parks or commons and improve the same;[9] to set out and care for shade and ornamental trees in highways, cemeteries, commons, and

[1] Revised laws, 1792, p. 167.

[2] Revised laws, 1792, p. 173.

[3] See chap. IX, p. 176.

[4] The towns were authorized to raise money to repair meetinghouses belonging to the town in order that they might be made useful for town purposes.

[5] And in that case, when proper notice had been given, persons of other religious persuasion than the minister in charge were not compelled to pay taxes to fulfill existing contracts.

[6] Laws, 1849, chap. 861, sec. 1.

[7] Laws, 1862, chap. 2580, sec. 3.

[8] Laws, 1866, chap. 4221.

[9] Laws, 1866, chap. 4271.

other public places;[1] to publish a town history;[2] to decorate the graves of soldiers in the late Rebellion, the expenditure not to exceed $200 yearly;[3] to provide and maintain suitable coasting and skating places, the expenditure not to exceed $500 yearly;[4] to maintain and record weather observations;[5] to provide and maintain armories for the New Hampshire national guard or reserved militia, the expenditure not to exceed $200 yearly for each organization;[6] to aid or pension disabled, and to bury deceased firemen;[7] to light streets;[8] to procure and erect a monument or memorial building to perpetuate the memory of soldiers belonging to the town that sacrificed their lives in the service of their country.[9]

This list is already a long one, but it is not yet complete. In 1864[10] an enactment provided that any town by a two-thirds vote might raise by tax or by a loan a sum of money not above five per cent of the town valuation to aid the construction of railroads in the state.[11] Under the provision of this law many cities and towns voted considerable sums to aid the railroads then building or soon afterwards commenced. This privilege seems to have been abused,[12] resulting in re-

[1] Laws, 1868, chap. 1; Laws, 1875, chap. 39; Laws, 1889, chap. 82.
[2] Laws, 1868, chap. 26.
[3] Laws, 1872, chap. 40.
[4] Laws, 1883, chap. 69.
[5] Laws, 1889, chap. 7.
[6] Laws, 1891, chap. 1.
[7] Laws, 1897, chap. 52.
[8] Public statutes, 1891, chap. 40, sec. 4.
[9] General laws, 1878, chap. 37, sec. 4.
[10] Laws, 1864, chap. 2890, sec. 1.
[11] The constitutional convention of 1850 offered an amendment providing that no town or city should either directly or indirectly aid any corporation or take stock therein, but the people at the polls rejected the same by a large vote. Journal of convention, 1850. See 56 N. H. Reports, p. 544.
[12] See 56 N. H. Reports, p. 544 *et seq.* for a list of sums appropriated by various towns under the act of 1864.

action in the sentiment of the voters. Hence the constitutional convention of 1876 proposed the following amendment, which the voters adopted: "the general court shall not authorize any town to loan or give its money or credit, directly or indirectly, for the benefit of any corporation having for its object a dividend of profits, or in any way aid the same by taking its stock or bonds."[1] This amendment to the constitution was followed by a statute passed in 1877[2] providing for the same restriction in statute form.

The towns have depended chiefly upon the direct tax on the inventory for their own use and to pay the county taxes.[3] The revenue from the other sources averages in most cases less than one-fourth of the towns' expenditures. In towns largely devoted to agriculture the natural conservatism of the voters has served to keep the direct taxes low. Indeed, parsimoniousness rather than extravagance in voting public taxes must be considered the fault of the rural communities. It is only in the industrial communities in the larger towns that extravagant taxes are voted. The movement for the constitutional and statutory prohibition of public aid to corporations originated in the cities,[4] where a large number of voters paying only nominal taxes put the citizens owning real estate at their mercy. Yet an examination of the rate of taxation in the various towns in the state will show that the difference in the rate paid by the towns purely agricultural and those largely industrial is less than is generally supposed. The fol-

[1] Laws, 1878, p. 26; Constitution of N. H., part 2, sec. 5.

[2] Laws, 1877, p. 51.

[3] The amount distributed to the towns by the state is now usually about equal to the state tax.

[4] Journal of constitutional convention, 1876, pp. 264–269.

lowing list, selected with the view of comparing typical rural with urban communities, shows a difference of only ten per cent on an average for the three years selected in favor of the rural towns, and it will be noticed that only one industrial town shows as high an average for the three years chosen as several of the purely farming towns.

TAX RATE—FARMING TOWNS.

Town.	1869–70	1887–8	1895–6	Average
New Hampton	2.35	2.16	1.96	2.16
Fremont	1.50	1.53	1.23	1.42
Northwood	1.95	1.75	1.83	1.84
Gilmanton	1.90	2.28	2.12	2.10
Hancock	1.46	1.72½	1.52	1.57
Temple	1.86	1.51	1.72	1.70
Westmoreland	1.25	.86	1.35	1.15
Washington	1.80	1.72½	1.30	1.61
Plainfield	1.25	1.57	1.70	1.51
Moultonboro	3.76	3.00	1.60	2.79
Tuftonboro	2.75	2.68	2.34	2.59
Sandwich	3.69	2.70	2.15	2.85
Average	2.13½	2.11½	1.63	1.95

TAX RATE—INDUSTRIAL TOWNS.

Town.	1868–70	1887–8	1885–6	Average
Berlin	5.65	1.80	2.50	3.32
Dover	2.20	1.65	2.00	1.95
Rochester	2.37	1.80	2.00	2.06
Tilton	2.20	1.62	1.76	1.86
Franklin	1.80⅔	2.25	1.80	1.95
Manchester	2.48	1.95	1.86	2.06
Nashua	2.80	1.70	2.18	2.23
Hinsdale	2.05	2.15	1.70	1.97
Swanzey	2.63	1.27	1.43	1.78
Newport	1.77	1.71	2.20	1.90
Claremont	1.81½	1.60	2.00	1.81
Conway	2.43	2.01	1.65	2.03
Average	2.53½	1.78	1.81	2.05

The second table, giving the rate by counties for all taxes assessed for state, county, and town purposes during the nine years 1887–1895, shows considerable, difference among the counties. Each county, however,

AVERAGE RATE OF TAXATION BY COUNTIES.

COUNTIES	87–88	88–89	89–90	90–91	91–92	92–93	93–94	94–95	95–96
Rockingham	1.50	1.50	1.62	1.61	1.60	1.64	1.59½	1.68½	1.77
Strafford	1.75½	1.77	1.79	1.88	1.81	1.80	1.77	1.91	1.95
Belknap	1.93	1.88	1.83	1.91	1.83	1.78	1.91	1.92½	1.99
Carroll	2.57	2.18	2.32	2.63	2.12½	2.16	1.90½	1.92	1.84
Merrimack	1.52½	1.55	1.54	1.55	1.57	1.61	1.59	1.67	1.89
Hillsboro	1.71	1.69	1.73	1.63	1.72	1.73	1.70½	1.83	1.85
Cheshire	1.33	1.33	1.39	1.30	1.31½	1.39	1.35½	1.38	1.50
Sullivan	1.63	1.55	1.73	1.64	1.65	1.68	1.66	1.75	1.90½
Grafton	1.66	1.65	1.66	1.64	1.67	1.77	1.73	1.86½	1.84
Coos	1.98	1.78	1.84	1.75	1.72	1.79	1.91	1.91	1.96
Average	1.67½	1.64	1.68	1.667	1.661	1.71	1.677	1.77	1.84

exhibits a strong tendency to raise about the same amount of money in comparison to its valuation year by year, so that there is little change in the rate by counties. A comparison of these rates with those for the year 1869–1870 discloses the fact that the rate is now considerably lower, nominally at least,[1] than it was just after the war, when the towns were paying off the war debt.

The enumeration in the preceding section of the purposes for which the towns may raise money legally is a fairly comprehensive one, but in order to make the picture of local taxation more complete it will be necessary to trace somewhat in detail the historical development of the more important uses to which town taxes are appropriated.

SEC. 6. *Taxes for the Support of Public Worship.* The provincial laws providing for the support of the ministry were continued in force by the act of 1777 until reaffirmed by the act of 1791[2] regulating towns and the choice of town officers.[3] The provincial acts

[1] The appreciation of money during the period must, of course, be taken into consideration.

[2] Revised laws, 1792, p. 167.

[3] This statute expressly declared parishes incorporated with town privileges to be towns for all purposes.

continued by the act of 1791 provided for a clergy settled by the towns and supported by public taxation. While none of the later acts expressly exempted clergymen or their property from taxation, such was the custom, a custom that was upheld by the courts when such cases were adjudicated. In 1798[1] it was held by the highest court in the state "that a minister of the church and congregation in a town" was not liable to taxation.[2] This doctrine was reaffirmed in 1815 by the supreme court.[3] On the other hand, the estate of an ordained minister, not settled over a corporate society, was held by the same court in 1807 to be liable to taxation.[4]

The movement for religious toleration began as early as 1791. William Plummer, a member of the constitutional convention of 1791, proposed as a substitute for article six of the constitution of 1784 an article "prohibiting the legislature from compelling any person either to attend a place of public worship, or to pay taxes for the purpose of building of churches, or for the support of religious teachers, except in pursuance of his own free act and agreement."[5] A second substitute was also proposed allowing the majority in each parish to select the pastor and to compel all to contribute taxes to his support. Neither of the above amendments was accepted by the convention. Instead, an article was submitted to the people providing that in case a minister was settled in any town, any person might within a

[1] Kelly *vs.* Bean *et al.*

[2] See Shirley, Dartmouth College causes, pp. 70–80.

[3] MS reports cited by Shirley, Dartmouth College causes, p. 71.

[4] Kidder *vs.* French, cited by Shirley, Dartmouth College causes, p. 71. Shirley attributes this decision to the well-known liberal view of Chief Justice Smith, Wingate dissenting.

[5] Life of William Plummer, p. 116.

certain time dissent against paying any taxes toward his support; also, that when minors became of age or when persons came into the town to live, they might enter such dissent. This dissent was in all the cases to free the person from contributing toward the support of the minister selected by a majority of the town. This amendment was rejected by the people by a vote of 994 for and 3993 against it.[1] This movement, though defeated as a constitutional guarantee, was moving quietly but strongly, and made rapid progress, sometimes by voluntary action, sometimes by judicial decision, sometimes by statute law. The development of parishes within parishes has already been noted. Such, for example, was the formation of the second parish in Exeter in 1755.[2] By 1800 the town of Sanbornton had of its own will granted religious toleration to all societies, and had equitably divided the "parsonage fund".[3] The first judicial decision favoring religious toleration was given in 1803, Chief Justice Smith holding that although the beliefs of the Congregationalists and Presbyterians were the same, they differed in their church government and discipline to such an extent that they were different sects, and therefor the member of one sect could not be assessed to support the other.[4] About the year 1800 the cases in litigation of this nature were numerous. William Plummer continued to be the leading spirit, and this "branch of business gave him much trouble,"[5] and in some of the cases "he won verdicts of the jury against charges of the court."[6] It is even stated that two of the

[1] Journal of convention, X N. H. Prov. and State papers, 113, 141.
[2] Bell, Exeter, 188.
[3] Runnels, Sanbornton, I, 77.
[4] Secomb, Amherst, pp. 275–6.
[5] Life of William Plummer, p. 185.
[6] Life of William Plummer, p. 186.

justices of the superior court in 1799 expressed a decided disapprobation of Plummer's constancy and zeal in supporting those who claimed exemption from taxes for the maintenance of clergymen.[1] To this advice Plummer indirectly replied that so long as he remained at the bar the court would find him a persevering and determined advocate "for the rights of conscience and property both involved in these issues."[2] Two steps were necessary to secure the complete separation of church and state: (1) the taxation of the property of the clergy; (2) the assumption of the expenses of religious worship by the religious societies.

The first was accomplished in 1816 by an act providing that the "real and personal estate of all ordained ministers of the gospel of every demonination within the state, shall hereafter be assessed and taxed in the same way and manner as other estates."[3] This was the immediate result of a clause in Governor Plummer's message to the legislature stating "the rights of conscience and of private judgment in religious matters are not only secured by the constitution to all men but are in their nature inalienable. Civil and religious liberty have usually flourished and expired together . . . while therefore it becomes every man scrupulously to examine the foundations of his own belief, he cannot guard with too much jealousy against the encroachment of the civil power on his religious liberties."[4]

The passage of the above act was followed on July 1,

[1] Life of William Plummer, p. 187.

[2] Life of William Plummer, p. 187.

[3] Laws, 1816, p. 91. This provision was not to effect any preëxisting contract.

[4] Governor's message, Senate journal, 1816, p. 24.

1819, by the passage of the so-called "toleration act"[1] whereby the complete separation of the church and state was effected in New Hampshire, and all church organizations were thereafter obliged to depend upon voluntary contributions to meet their expenses.[2] Supplementary to the provision releasing the citizen from taxation for the support of religious worship was a clause providing that religious societies might be incorporated and empowered to assess and collect taxes for their own use upon their own members.

SEC. 7. *Taxes for the Support of Public Education.* Each town was originally a single school district, but owing to the large area of the towns, the lack of means of communication, and the strong spirit of localism

[1] Laws, 1819, p. 246. The movement for religious toleration in New Hampshire was largely influenced by (1) parallel movements in neighboring states and (2) the varying fortunes of the great political parties. After about twenty years of partial compulsory taxation for religious worship, Vermont in 1807 adopted complete religious toleration. Connecticut followed in 1818, at the adoption of her first constitution. Maine, in formulating her constitution in 1819, provided for complete separation of the church and state. New Hampshire, by the passage of the act of 1819, preceded Maine in the actual operation of the law, and thus took the third place in the movement that has long since become universal throughout the United States, preceding Massachusetts by fifteen years. The Congregationalists were largely Federalists, the opposing sects Republicans. The Republicans first came into power in the state in 1805. From this date until 1816 the parties were evenly matched. After 1816 the Federalists became permanently the minority party. The separation of church and state came with the rise of the Republican power in the state. The Baptists were recognized in law as a distinct sect in 1804, the Universalists in 1805, the Methodists in 1807. The complete ascendency of the Republican party resulted in 1816 in the passage of the act providing that the estates of all ministers should be taxed; later, in 1819, in the passage of the toleration act. See Barstow, History of New Hampshire, chap. VII, for a review of the controversy that led to the act of 1819.

[2] With this exception: when there was an existing contract between a town and a minister, the contract was to be fulfilled, but any person, by filing a statement affirming that he was of another persuasion, would be exempted from taxation for that minister's support.

which has at all times characterized the people of New England, the towns began to create temporary districts during the provincial period. This movement increased with the growth of local communities in the towns, and was given legal effect in the act of 1805[1] which provided that towns might sub-divide into districts, determine the limits thereof, and alter them from time to time. Each district was authorized "to raise money for the purpose of erecting, repairing or purchasing a school house in their respective districts, and of necessary utensils for the same." By act of July 6, 1839,[2] such a division was made obligatory upon the selectmen upon application of ten legal voters, a majority being freeholders of the town. These districts were in reality miniature towns whose sole object of existence was to care for the schools included within their territorial area. Their power to raise money by taxes was limited as will be shown later. Of course any town that was not divided was a district.[3]

A centralizing movement began as early as 1845,[4] when two or more contiguous districts were authorized to unite for the purpose of maintaining a high school. This was followed in 1854[5] by a general act empowering any two or more districts in the state by a two-thirds vote of all the legal voters to unite and form one district. The act of 1854 was amended a year later by requiring the assent of only two-thirds of the legal voters present to secure an act of union.[6] For ten years the number of votes required fluctuated be-

[1] Laws, 1805, p. 45.
[2] Laws, 1839, p. 398.
[3] Laws, 1840, p. 487. So declared by statute, Dec. 23, 1840.
[4] Laws, 1845, p. 223.
[5] Laws, 1854, p. 1430.
[6] Laws, 1855, chap. 1679.

tween a majority and a two-thirds vote; since 1865[1] the statute has allowed a union by a majority vote of the voters in the districts interested. Until 1870 the initiative was with the districts only. By act of July 2, 1870,[2] the initiative was vested also in the towns. Any town was empowered at any time to abolish the school districts therein, and at once to take possession of the property of the districts and to assess a tax equal to the value of the whole property involved with which to compensate the districts for their school property. The legislation of 1870 was followed by a slight reaction, in 1874[3] it being enacted that any town having abolished the districts might reëstablish the original districts by a two-thirds vote at any time within two years from the passage of the act. This reaction was merely temporary. The abolition of the districts and the establishment of the town system was an economic necessity. For ten years longer the spirit of localism, aided by the well known conservatism of the rural communities, prevented further action. In 1885 the legislature enacted that "the division of towns into school districts heretofore existing is hereby abolished, and each town shall hereafter constitute a single district for school purposes."[4] Districts organized under special acts of the legislature were exempted from the provisions of the act. As a matter of conciliation a provision was added that any town at the end of five years might by a majority vote of all the voters of the district reëstablish the district system in such town. As a matter of fact, the prejudice

[1] Laws, 1865, p. 3142.

[2] Laws, 1870, p. 409.

[3] Laws, 1874, p. 311.

[4] Laws, 1885, p. 252.

against the law wore away, and at end of the five years the town system was universally maintained.[1]

The amount of the taxes to be raised for the support of the schools, or the rate of taxation for that purpose, was previous to 1789 left wholly to the towns. The act of 1789,[2] which affirmed in its preamble that "the laws respecting schools have been found not to answer the important end for which they were made," was the first state law to fix the amount which each town must raise, by requiring the selectmen of the several towns and parishes "to assess annually the inhabitants of their respective towns according to their polls and ratable estates, in a sum to be computed at the rate of five pounds for every twenty shillings of the proportion for public taxes for the time being and so for a greater or lesser sum." In case the selectmen neglected or refused to make such assessment the property was made liable for the full amount. This rate has at subsequent dates been raised, until in 1898[3] it stood at a sum to be computed at the rate of "five-hundred dollars for every dollar of the public taxes apportioned to such town and so for a greater or lesser sum."[4] In the assessment authorized

[1] During the controversy that preceded the adoption of the law of 1885, the state superintendents of public instruction led the movement, especially the Hon. J. W. Patterson, who unified public sentiment in its favor, and ably explained the system, both on the platform and in his published reports. By this act New Hampshire was the second state in New England to adopt the town system of public schools. See the New Hampshire School reports, 1869–1892.

[2] Laws, 1789, p. 251; Revised laws, 1792, pp. 275–6.

[3] Laws, 1895, p. 438.

[4] The rate has varied from £5 for every £1 of the town's proportion of the state tax in 1789 to $500 for every dollar of the proportion in 1895. In 1799 it was $35; in 1807, $70; in 1852, $135; in 1807, $200; in 1870, $350; and in 1893, $400. From 1805 to 1885 the amount raised was distributed among the districts, either by vote of the town in public meeting or in proportion to the valuation of the property in the districts. Since 1885 it has been distributed to various schools by the town board of education.

by the act of 1789 the tax was not to extend to the lands of non-residents. The act of 1799 authorized the taxation of the improved lands and buildings of non-residents, and finally by the act of 1804 the unimproved lands of non-residents were subjected to taxation for school purposes. In addition to the amount required to be raised by law for schools, many of the towns have raised by vote a certain additional sum to be used for the same purposes. No legislation definitely authorizing such action appears earlier than 1842, when such a clause is found in the revised statutes. The act of 1789 and its successors were intended to fix the minimum amount to be raised, and not to prevent the towns from voting additional sums if they chose to do so. A study of the town histories already published shows that in many, if not in the majority of cases, the towns habitually raised more money than was required by law.[1] Since the enactment of the law allowing the towns to subdivide into districts, the districts have possessed considerable power of voting taxes. The act of 1805 permitted the districts to raise taxes for building and furnishing schoolhouses. By the act of December 22, 1808,[2] the districts were authorized to purchase and hold in fee simple so much land as might be necessary for a school lot and yard. But it was not until 1867[3] that the districts were individually permitted to raise additional money for the support of schools.

[1] See also Report of state superintendent of schools, 1876, p. 177. Judge Parker said: "The towns may, if they think proper, vote to raise a larger sum than the selectmen are thus bound to assess, and with a commendable zeal in the cause of education this is often done." Tucker *vs.* Aiken, 7 N. H. Reports, 128.

[2] Laws, 1808, p. 32.

[3] An act of July 8, 1862, permitted schools organized under the Somersworth Act to raise additional sums by a two-thirds vote. This applied chiefly to city schools.

In addition to the revenue raised by direct local taxation, either compulsory under state law or voted voluntarily by the towns and districts, there has been appropriated to the support of the public schools the proceeds of the revenue from three other sources: (1) the literary fund, (2) the dog tax, and (3) miscellaneous sources.

1. The literary fund was established in 1821[1] by an act requiring all banking corporations established under the authority of the state to have their circulating notes stamped by the treasurer and to pay annually to the state a tax of fifty dollars for every thousand dollars in such notes, or in place of the above tax to pay annually one-half of one per cent on the amount which should at the time constitute the actual capital stock of said bank. This fund was originally intended "for the sole use and purpose of endowing or supporting a college for instruction in the higher branches of science and literature." The fund was allowed to accumulate until 1829, when it amounted to $64,000.[2] By act of December 31, 1828,[3] in accordance with the recommendation of Governor Bell,[4] this fund was directed to be paid over to the towns annually, to be divided severally among them according to the apportionment of the public taxes then existing, and "to be applied by the repective towns to the support of the common free schools, or to other purposes of education, in addition to the sums which may be required by law to be raised." The division of the fund was made annually on the above basis until 1848, when by act of December 13[5] it was provided that thereafter the fund should be divided ac-

[1] Laws, 1821, p. 393.
[2] New Hampshire School report, 1876, p. 290.
[3] Laws, 1828, p. 341.
[4] Governor's message, Journal of house, 1828, p. 16.
[5] Laws, 1848, p. 706.

cording to the number of scholars not less than four years of age[1] who had attended the district schools not less than two weeks of the preceding year. After the introduction of the national banking system, which practically abolished the state banks,[2] the act taxing banks on their capital stock was repealed.[3] By an act of the previous year, 1866,[4] the money received from the tax on the deposits of non-residents in the savings banks was constituted a part of the literary fund to be divided as before. Subsequently, by a joint resolution of June 28, 1867,[5] the governor, with the advice of the council, was directed to sell the public lands of the state, the proceeds to become a part of the literary fund. An act[6] one year later modified the joint resolution of 1867 by providing that the proceeds should be set apart as a school fund to be applied to the purposes of common school education according to the direction of the legislature from time to time. The fund was allowed to accumulate until 1883,[7] when the treasurer was directed to invest it, and it was provided that the proceeds of the funds thus invested should be used for holding teachers' institutes in each county in the state annually under the direction of the state superintendent of public instruction. Since 1866 the non-resident savings bank tax has constituted the greater part of the revenue devoted to the literary fund. However, the fund received a substantial addition by the act of August 14, 1889,[8] providing "for the uniform taxation of the trust com-

[1] Changed to five years in 1878. General laws, p. 226.
[2] Preamble to act of July 5, 1867, Laws, 1867, p. 19.
[3] Laws, 1867, p. 19.
[4] Laws, 1866, p. 3284.
[5] Laws, 1867, p. 28.
[6] Laws, 1868, p. 153.
[7] Laws, 1883, p. 49.
[8] Laws, 1889, p. 76.

panies and other similar corporations." By this act the taxation of such companies was made uniform with the taxation of savings banks, and the taxes on non-resident deposits consequently became a part of the literary fund.

2. The act of June 28, 1867,[1] was the first to provide that the revenue arising from the taxation of dogs, after the payment for damages to domestic animals had been deducted according to law, should be equally divided among the districts in the towns and cities of the state every second year. This act was amended in 1876[2] by providing that each town or city might annually divide the tax as above, or keep it in the treasury as a fund to satisfy any claims for damages to domestic animals. Finally the public statutes of 1891 required that all money arising from this tax not due for damages by dogs should be annually applied to the support of the common schools as other school money.[3]

3. The miscellaneous sources which have contributed to the support of education are four in number: (1) the revenue from local funds, usually the proceeds of the sale of the lots granted to the schools in the original charters; (2) a considerable sum contributed by individuals in money, board, or fuel; (3) a portion of the railroad tax, which is required "to be appropriated as other town money;" and (4) in 1848[4] the balance of the proceeds from the sale of public lands, then in the state treasury, was appropriated to the literary fund to be distributed and used as provided by law.

SEC. 8. *Taxes for the Support of Highways.* The larger part of the expense of constructing and repairing

[1] Laws, 1867, p. 2.
[2] Laws, 1876, p. 569.
[3] Public statutes, 1891, p. 25.
[4] Laws, 1848, p. 609.

the highways in the state has been borne by the towns, and has been paid by an annual tax upon the polls and estates.[1] In unincorporated places the tax has been laid upon the owners of the land according to their respective interests, generally taking the form of a uniform assessment per acre.[2] However, two exceptions to this general method may be noted: (1) the construction and operation of private roads by chartered turnpike companies, maintained by the toll system; and (2) the construction of through roads by several towns with an assessment of part or all of the expense upon the county taxes. The private roads were constructed almost wholly within the first two decades of the nineteenth century, and after being in operation for a term of years were surrendered to the towns either gratuitously or for a small compensation. Roads extending through several towns have been constructed and maintained jointly by the towns directly interested, or, as in some cases, partly by the towns and partly by the county.[3] An act of 1831[4] permitted the county officers in case a road was considered "of public and general value" to apportion a part of the expense, not over one-half, to the county. This was followed in 1839[5] by an act providing that the proper officers might require the county to keep in repair any road "of general utility if burdensome to the town." In some cases in addition to those already mentioned the county is required to bear the expense of the highways in unincorporated places. In several cases during the years immediately preceding the Civil War

[1] Revised laws, 1792, p. 280; Revised statutes, 1842, p. 126; Laws, 1893, p. 24.

[2] Revised laws, 1792, p. 283; Laws, 1829, p. 525.

[3] Revised laws, 1792, p. 168.

[4] Laws, 1831, p. 38.

[5] Laws, 1839, p. 383.

the state legislature granted direct state aid to the towns and places in the mountain region for the purpose of building and repairing highways.[1]

The authority for laying out a new highway wholly within one town is vested in the board of selectmen.[2] The same officers are likewise empowered to assess a tax sufficient to cover the expense, such tax to be collected with the regular taxes. Where the road extended through two or more towns, the authority was entrusted under the earlier acts to the selectmen of the towns interested, or in case of disagreement or refusal to act, to the courts;[3] in 1840[4] to the road commissioners, with the approval of the courts; and later, in 1855,[5] to the county commissioners.

The highway tax has in general been "worked out" by the labor of men and teams, although the paying of the tax in money was made permissive in 1823,[6] and obligatory in 1893. The act of 1823 provided that any town by vote might have its highway tax paid in money, the proceeds to be expended under the direction of the selectmen or surveyors. This provision was used chiefly by the larger villages which were not incorporated as precincts or cities and which were therefore under the general laws relating to highways. The act of 1893[7] abolished the district system, and enacted that the highway tax should be assessed, collected, and paid into the treasury as other taxes. The sum thus received was to be expended by elected highway agents under the gen-

[1] Laws, 1853, 1854, 1855, 1858, 1859.
[2] Revised laws, 1792, p. 168; Revised statutes, 1842, p. 146.
[3] Revised laws, 1792, p. 168.
[4] Laws, 1840, p. 438.
[5] Laws, 1855, p. 1539,
[6] Laws, 1823, p. 90.
[7] Laws, 1893, p. 47.

eral direction of the selectmen. The same act provided that the highway tax rate should be at least one-fourth of one per cent of the valuation, but need not exceed $50.00 per mile. The towns were of course allowed to raise additional sums to be assessed and expended in the same way.

CHAPTER XI.

COUNTY TAXATION.

SEC. 1. *Introduction.* An act dividing the province of New Hampshire into counties [1] passed both house and council and received the governor's signature in April, 1769.[2] It was approved by the crown in council, and became effective in March, 1771.[3] This act was the result of persistent efforts on the part of the rural districts, extending over nearly a score of years, to secure the establishment of courts of justice in the various sections of the province. Before 1771 the courts were held at Portsmouth; after 1771 in one or two centrally located towns in each county. As both province and township preceded the county, the questions raised by the advent of the county obviously related to (1) the purposes to which the revenue was and is applied, (2) the sources of the revenue, (3) the methods of administration.

SEC. 2. *Purposes to Which the Revenue was and is Applied.* The county was created for the purpose

[1] The colony of Massachusetts Bay was divided into "4 sheires" in 1643. Mass. Rec., II, 38. The New Hampshire towns were included within the limits of Norfolk county, with Salisbury as shire town. Dover and Portsmouth were, however, permitted to retain some of their former independence, especially functions of a judicial nature. Although the laws for county purposes were comparatively unimportant, the county was evidently a taxing district during the remainder of the Massachusetts period. In 1658 it was enacted by the general court that the "commissioners of Dover, Portsmouth and York shall annually chose some persons in their several towns to levy the amount of the annual levy, also certain arrears." Mass. Rec., IV, 360. In 1669 the court of election exempted Mr. Edward Hilton from the "county rate" on account of certain official duties undertaken by him for the county. I N. H. Prov. papers, 306. Such acts give evidence that the county system was in use during the period.

[2] VII N. H. Prov. papers, 228–9.

[3] Acts and laws, 1771, p. 207.

of carrying the courts of justice nearer to the people. Its purpose necessarily conditioned to a considerable extent its expenditures, but like all other institutions in New Hampshire the county has been modified by changing conditions during the century and a quarter of its existence.

As a judicial district the county naturally from the first exercised a large authority over the idle, the vagrant, and the disorderly. As early as 1791[1] the court of the general sessions of peace was authorized to provide, at the expense of the county, "a house of correction for the keeping and correcting of rogues, vagabonds, common beggars, lewd, idle or disorderly persons, and in which to employ the poor;" and it was added that when no such house was provided, "the common prison might be used." All paupers having a "settlement" in any town have been and are now supported by the town. All other paupers were, before 1809, supported by the state. By act of June 27, 1809,[2] however, it was provided that when any person "not an inhabitant of any town or place in this state, nor by the laws thereof the proper charge of any town or place in the same" was in need of relief, he should be relieved by the town, but that the expense should be ultimately paid out of the county treasury. The important act of 1828[3] reaffirmed previous legislature in the main, but in addition authorized "the court of common pleas, if they see fit, to provide, at the expense of any county in the state, all such lands and buildings as may be necessary for the accommodation, support and employment of the poor, who may be chargeable to the

[1] Revised laws, 1792, p. 300.

[2] Laws, 1809, p. 18.

[3] Laws, 1828, p. 296.

county and for a house of correction."[1] Subsequent legislation has but developed the two lines of work already indicated, so that to-day the county appropriates its revenue for but two purposes, viz: the administration of justice and the care of the county dependents.[2]

SEC. 3. *Sources of the County Revenue.* The county revenue arises chiefly from the following sources: (1) the county tax on the inventory, (2) license fees, (3) fines, forfeitures, etc., (4) miscellaneous sources.

1. The tax on the county inventory has always been the chief reliance of the county government. In the early days it was less important than later because the county was originally more strictly a judicial district, and further because the officers were largely paid by fees. With the extension of the functions of the county there was a decrease rather than an increase of the revenue from other sources, and as a consequence the taxes on the inventory were obliged to bear the greater burden. To illustrate: in 1832 the town of Portsmouth paid as its county tax on the inventory $972; in 1833, $1,157.67; in 1881, $2,407.20; in 1891, $1,976.50. In 1852–3 New Ipswich paid in county taxes $872.70; in 1886–7, $893.98.

2. From 1821 to 1878, and again from 1893 until 1897, the counties received a small income from license fees imposed upon hawkers and peddlers.[3] The act of 1821[4] authorized the justices of the court of sessions to

[1] By acts of 1841, 1860, 1875, 1883, and 1889 settlements gained prior to 1796, 1840, 1860, 1870, and 1880 respectively were abolished. By act of 1897 (Laws, 1897, chap. 31) towns were made liable for care of only those paupers who had gained settlements within ten years.

[2] A county may in certain cases be required to bear part of the expenses of constructing and repairing roads.

[3] See chap. VI, sec. 6, pp. 124–126 relating to fees from same source accruing to the state.

[4] Laws, 1821, p. 389.

grant a license good for one year to any peddler or hawker of good moral character upon the payment of $12 into the county treasury and a fee of one dollar to the clerk for recording the same. The sale of goods grown and manufactured in the United States except feathers, distilled spirits, playing cards, lottery tickets, and jewelry was exempted from the provisions of the act. In 1846[1] the license fee was raised to $25. The act of 1847[2] was the first to discriminate between citizens of the state and those of other states. The fees for a citizen of the state who had been a resident for one year and was reputed to be of good moral character were fixed at from $2 to $20 at the discretion of the court, the license being good for one year as before. A peddler or hawker not a citizen of the state might be granted a similar license upon the payment of $50.[3] The act of 1847 was repealed in 1848 and the rates lowered, but the discrimination continued. The annual rates for a license were to residents $10, to non-residents $20, and a further fee of $20 was exacted if the vendor wished to sell goods which were the property of non-residents.[4] In 1853 a further restriction on eligibility to the business of peddling was introduced by the provision that all licenses must be recorded, for which a fee of 25 cents was imposed, and that the licenses could be granted only to citizens of the United States and residents of New Hampshire for three years. These licenses became void when residence in the state was lost.[5]

[1] Laws, 1846, p. 322. In 1842 the power of granting licenses was transferred to the court of common pleas. Revised statutes, 1842, p. 238.

[2] Laws, 1847, p. 467.

[3] A fee of $50.00 extra was exactad if the applicant wished to sell goods from other states.

[4] Laws, 1848.

[5] Laws, 1853, p. 1341.

The legislation upon this subject in 1858 and in 1859 is exceedingly interesting, not only from the financial but also from the political point of view. The act of 1858[1] provided that the clerk of the court of common pleas might issue a license for peddling to applicants upon evidence of good moral character, of two years citizenship in the United States and in New Hampshire, of a year's residence in the state previous to making the application, and of the payment to the county treasurer of $50 for the license. The license was good for one year, but did not permit the sale of liquor, playing cards, or other articles whose sale was prohibited by law; nor was it to "prevent any citizen of this state from selling any fish, provisions, farming utensils or other articles lawfully raised or manufactured in this state." An amendment was offered in the house providing that licenses should be issued to citizens of other states upon the payment of a higher license fee, but was rejected by a vote of 195 to 52 upon a call for the previous question.[2] The act of 1858 registered high water mark in the tide of sectionalism and provincialism in the state.

The act of 1859 is one of the first of the indications of that great returning national spirit which was called out by the impending dangers of the period. In the ordinary course of events a statute relating to hawkers and peddlers would hardly be esteemed of sufficient moment to claim the attention of the governor in his annual message. However, Governor Goodwin in his message of 1859 recommended the repeal of the act of 1858, and warned the legislature that while a substitute act seemed desirable it should be framed with great care

[1] Laws, 1858, p. 1991.
[2] House journal, 1858, p. 275.

and discrimination so that it would not interdict the sale of agricultural products of other states.[1] The act of 1859[2] relating to hawkers and peddlers, while discriminating in fees against residents of other states, was much more liberal. The fee for a resident of the state was fixed at $10, and for a non-resident at $10 for each county in which he sold goods; if the goods sold were the property of non-residents, the fee was fixed at $15 for each county where the licensee entered into business. The licenses were granted in all cases by the clerk of the supreme judicial court, and were good for one year. The provisions of the act were not to apply to citizens of the state unable to earn a living by manual labor owing to ill health or decrepitude; nor to those selling fish, fruit, vegetables, provisions, fuel, carriages, farming utensils, live animals, brooms, newspapers, maps, books, pamphlets, and agricultural products of the United States; nor to those selling brittania, brass, and wooden ware, earthen-, tin-, iron-, glass-, or stone-ware, wherever manufactured; nor to any citizen of the state selling any other articles lawfully raised or manufactured in the state, except distilled spirits, playing cards, lottery tickets, and jewelry.

This act was continued in force until the revision of the tax laws in 1878, when the revenue arising from the license fees of hawkers and peddlers was turned into the state treasury. By the act of 1893,[3] in force four years, licenses might be issued by the secretary of state for a town, county, or for the entire state. The fee accrued to the treasury of the district for which the license was issued. The fee for a county

[1] Senate Journal, 1859, p. 32.
[2] Laws, 1859, p. 2092.
[3] Laws, 1893, p. 53.

license payable to the county treasurer was $25. By the act of 1897, now in force, no revenue accrues to the county for the licensing of hawkers and peddlers. The annual revenue from the above source has been small.

3. Fines and forfeitures not specially appropriated to any other body have usually accrued to the county treasury. As early as 1772 it was provided that fines and forfeitures previously accruing to the public treasury should go to the county. An act of February 10, 1791,[1] provided that all fines and forfeitures arising from the escape of prisoners from prisons and goals in the state should go to the county treasury. An act of five years later, June 17, 1796, provided that all fines or forfeitures arising or becoming due upon judgment of any state court should be appropriated for the use of the county. But this was not to affect fines and forfeitures especially appropriated to the town or state. In certain cases where the initiative is taken by private citizens the statutes now provide that one-half of the fine awarded shall go to the county treasury, and one-half to the complainant or the prosecutor.[2] The amount of revenue from this source is sufficient to pay only a part of the expenses caused by its collection, including the cost of suit in the courts necessary to secure judgment. For example, Grafton County in the year 1870–1[3] received $218.52 in fines out of a total revenue of $42,417.43; in 1896–7,[4] $457.81 out of $59,362.61.

4. The most important of the miscellaneous sources of county revenue are the extensive farms which the several counties in the state acquired about the middle

[1] Revised laws, 1792, p. 137.

[2] Revised statutes, 1842; Laws, 1853, p. 98; Public statutes, 1891, p. 127.

[3] Report, Grafton County, 1871.

[4] Report, Grafton County, 1897.

of the nineteenth century[1] and have since operated. Upon these farms are supported a part of the county poor, and the revenue from them, when well managed, is considerable.

SEC. 4. *Administration.* The administrative feature of the county taxation is exceedingly simple, owing to the fact that nearly the whole machinery is supplied by either the town or the state. It will be considered under the two following heads: (1) apportionment, and (2) assessment and collection.

1. The apportionment made by the state authorities for the assessment of the state tax is declared by statute to be the basis of the county tax. The work assigned to the county officials is merely advisory. The act of 1878[2] establishing a state board of equalization provided that a representative from each board of county commissioners should meet with the members of the state board of equalization and together form a joint board of equalization for the counties of the state. The act was amended in 1879[3] by striking out the clause providing for a joint board, and by requiring the county commissioners to visit the towns in the county and to equalize the valuation among the towns as far as they were able and to report to the state board. The state board was given absolute authority to modify, as seemed best, the report of the commissioners. As a matter of fact, an able and harmonious board of county commissioners have large influence over the valuations in their own county, and hence in apportioning the state tax among the several counties of the state, and also among the towns within the county.

[1] Under authority of the act of Dec. 16, 1828. Laws, 1828, p. 296.
[2] Laws, 1878, p. 199.
[3] Laws, 1879, chap. 55, sec. 13.

2. By the act of March 19, 1771,[1] the justices of the peace of each county at any court of general sessions of the peace were authorized to make orders for the raising of any sums of money that might be found necessary for the county expenses within each county. This method was continued until 1794, when the present method was introduced. The act of 1794[2] required the county treasurer in September of each year to certify to the judges of the court of common pleas an account of the state of the county treasury, and the said judges were then authorized to determine what taxes were necessary for the ensuing year. The clerk of the court was required to attend the next session of the legislature, where the representatives of the county were authorized to form themselves into a convention for the sole purpose of granting and appropriating taxes for the county. The method prescribed in 1794 has been modified in its administrative details by the acts of 1801 and of 1855. The act of 1801[3] abolished the court of general sessions and divided its powers between the court of common pleas and the county convention, comprised of the representatives in the state legislature from the county. To that convention was given the sole function of granting and appropriating the county taxes. The county revenue was to be paid out by the county treasurer on order from the judges of the court of common pleas. The act of 1855[4] provided for a board of elective county commissioners, which was given general authority over the county government. To this board were granted the powers of the county road commissioners, the powers of the court of common pleas so far as they related

[1] Acts and laws, 1771, p. 207.
[2] Revised laws, 1797, p. 66.
[3] Laws, 1801, p. 581.
[4] Laws, 1855, p. 1539.

to county finances, and the care of county property and of county paupers. The county convention continued all its former powers over the assessment of the county taxes. The taxes thus voted and assessed were required to be collected by the county treasurer as before, *i. e.*, the selectmen of each town assessed the county tax with the town taxes, and the town collector collected the same while collecting the town and state list.[1] All officers assessing or collecting county or town taxes were by an act of 1794[2] placed under requirements and given powers such as the state and town officers possessed in assessing and collecting state and town taxes.

[1] Laws, 1771, p. 207.
[2] Compiled laws, 1815, appendix, p. 545.

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